

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(1) SHERIFFS/(i) High Sheriffs of Counties/1101. Introduction.

SHERIFFS (

1. THE OFFICE

(1) SHERIFFS

(i) High Sheriffs of Counties

1101. Introduction.

A high sheriff¹ must be appointed annually for every county². The authority of a sheriff does not extend beyond his own county³. The power of the Crown at common law to grant to a town or city the franchise or liberty of choosing its own officer to exercise the powers and duties of a sheriff⁴ was abolished in 1974⁵. Most of these franchises or liberties, as regards the powers and duties of the sheriff, have been merged by statute in the counties in which they are situated⁶.

The office of sheriff is of great antiquity⁷, but its importance has declined as many of the sheriff's powers and duties have been transferred to the courts and to departments under the authority of the Lord Chancellor⁸.

A person duly qualified⁹ to serve in the office can claim exemption only by virtue of an Act of Parliament or letters patent¹⁰, and if a person duly appointed refuses to serve he is liable to a criminal information or to be indicted¹¹.

1 Sheriffs appointed for a county or Greater London are known as 'high sheriffs', and any reference in any enactment or instrument to a sheriff must be construed accordingly in relation to sheriffs for a county or Greater London: Local Government Act 1972 s 219(1). 'Greater London' in s 219 (as amended) does not include the City or the Temples: s 219(8). 'County' in s 219 (as amended) has the same meaning as in the Sheriffs Act 1887 (see note 2 *infra*): Local Government Act 1972 s 219(8) (amended by the Local Government Changes for England (Miscellaneous Provision) Regulations 1995, SI 1995/1748, reg 8(2) (amended by SI 1996/330)).

2 Sheriffs Act 1887 s 3(1). 'County' in relation to Wales, means a preserved county (as defined by the Local Government (Wales) Act 1994 s 64): Sheriffs Act 1887 s 3(4) (added by the Local Government (Wales) Act 1994 s 62(1)). For lists of the counties of England and Wales see the Local Government Act 1972 ss 1(2), 20(2), Sch 1 Pts I, II, Sch 4 Pt I (substituted by the Local Government (Wales) Act 1994 s 1(2), Sch 1); and LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq. 'County', in relation to England, means, subject to the provisions of the Sheriffs Act 1887 s 38, Sch 2A (added by the Local Government Changes for England (Miscellaneous Provision) Regulations 1995, SI 1995/1748, reg 8(1)(b)), a county for the purposes of the Local Government Act 1972: Sheriffs Act 1887 s 38 (amended by Local Government Changes for England (Miscellaneous Provision) Regulations 1995, SI 1995/1748, reg 8(1)(a)). Subject to certain necessary modifications, Greater London other than the City of London, which includes the Inner Temple and the Middle Temple, is treated as a county for the purposes of the Sheriffs Act 1887: see the Administration of Justice Act 1964 ss 19, 26, 38(1) (all as amended); and LONDON GOVERNMENT. As to the appointment of sheriffs for counties see PARA 1103 et seq post; and as to the election of sheriffs for the City of London see PARAS 1109-1110 post. For a directory showing the sheriffs' shrievalties see Atkin's Court Forms (2nd Edn) Directory of High Court, District Registries and County Courts.

3 *Platt v Sheriffs of London* (1550) 1 Plowd 35 at 37a. As to the functions of sheriffs see PARA 1128 et seq post.

4 As to the application of the Sheriffs Act 1887 to franchises see s 34 (repealed).

5 See the Local Government Act 1972 ss 219(7), 272(1), Sch 30.

6 Most of them were so merged under the Liberties Act 1850 (repealed). However, the Cinque Ports and ancient towns of Winchelsea and Rye were merged under the Cinque Ports Act 1855 (see s 2 (repealed in part)), and by the County of Hertford and Liberty of St Alban Act 1874 (repealed) the liberty of St Alban was made part of the county of Hertford for all purposes (see s 7 (repealed)), although provision was made for saving the rights and privileges of the hundred or hereditary sheriff of the hundred of Cashio (see s 38 (repealed)). In the Isle of Ely the chief bailiff, who was appointed by the Crown, acted as sheriff except with regard to summoning juries, that duty being performed by the sheriff of the counties of Cambridge and Huntingdon: Liberties Act 1836 ss 12, 15 (both repealed). In the liberty of the Honor of Pontefract it was the duty of the sheriff of the county of York, and not the bailiff of the liberty, to execute all writs of execution: 8 & 9 Vict c 72 (Liberty of Pontefract) (1845) s 4 (repealed). The former franchise of Swansea is now preserved as a bailiwick: see PARA 1111 note 6 post. As to bailiwicks see PARA 1111 post.

7 For a general description of the office of sheriff, both past and present see the Guide to the Office of High Sheriff (1992), published by the Shrievalty Association.

8 As to the decline of the sheriff's jurisdiction see PARA 1128 post.

9 As to the qualifications to serve as sheriff see PARA 1106 post.

10 *R v Larwood* (1694) 1 Ld Raym 29 at 32-33. As to the exemptions from liability to serve see PARA 1107 post. As to letters patent see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 920.

11 *A-G v Read* (1678) 2 Mod Rep 299; *R v Larwood* (1694) 1 Ld Raym 29; *R v Woodrow* (1788) 2 Term Rep 731; *R v Hutchinson* (1893) 32 LR Ir 142. In practice, the Privy Council requires the written consent of the nominee before his name is added to the roll.

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NOTE 2--1887 Act s 38 amended: Access to Justice Act 1999 Sch 15 Pt V(1); Courts Act 2003 Sch 10.

NOTE 5--1972 Act s 219(7) amended: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(1) SHERIFFS/(i) High Sheriffs of Counties/1102. Tenure of office of sheriff.

1102. Tenure of office of sheriff.

The office of high sheriff, which is held during the pleasure of the Crown, is an annual one, the grant of the office for more than a year being void¹. The office is not avoided by the demise of the Crown² or the Duchy of Cornwall³, nor by the succession of the sheriff to a peerage⁴.

Every sheriff of a county must continue to act as such until his successor has made the requisite declaration and entered upon office⁵. The sheriff of a county may not transfer his office⁶, nor, while holding that office, may he act as a justice of the peace of his county⁷.

1 Sheriffs Act 1887 s 3(1), (2). Although the high sheriff of a county may be dismissed at the pleasure of the Crown, the Monarch cannot legally deprive him of part only of his office or grant any portion of the office to another: *Mitton's Case* (1584) 4 Co Rep 32b. As to the procedure for the appointment of sheriffs see PARAS 1103-1105, 1108 post.

2 See the Demise of the Crown Act 1901 s 1(1); and CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARAS 15, 17.

3 Sheriffs Act 1887 s 3(3) (amended by the Statute Law (Repeals) Act 1973). As to the appointment of sheriffs of Cornwall see PARA 1105 post. The person holding office continues in office for the remainder of his term, unless sooner removed or superseded, as if the demise had not taken place: Sheriffs Act 1887 s 3(3) (as so amended).

4 *Mordant's Case* (1583) Cro Eliz 12. As to the effect of the death of a high sheriff see PARA 1115 post.

5 Sheriffs Act 1887 s 7(2). As to the declaration of office see PARA 1108 post.

6 As to the duty of the coroner to act in place of the sheriff where the sheriff is personally interested see CORONERS vol 9(2) (2006 Reissue) PARA 941.

7 As to the offices which a high sheriff is disqualified from holding see PARA 1106 post.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(1) SHERIFFS/(i) High Sheriffs of Counties/1103. Nomination of high sheriffs.

1103. Nomination of high sheriffs.

On 12 November in every year or, if that day falls on a Sunday, then on the ensuing Monday, persons fit to serve as high sheriffs¹ must be nominated at the Royal Courts of Justice in the customary manner² for every county other than the counties of Cornwall, Lancashire, Greater Manchester and Merseyside³. Nominations are made by the Lord Chancellor, the Chancellor of the Exchequer, the Lord President and others of the Privy Council, and the Lord Chief Justice of England, or any two or more of them, with the judges of the High Court, or any two or more of them⁴.

1 As to the qualifications for office see PARA 1106 post.

2 The method of nomination is as follows: after the great officials and judges have taken their places on the bench, the Queen's Remembrancer reads the names of nominees for service as sheriffs in the various counties in the preceding year. The names of the sheriffs actually in office are then struck out, and one of the judges present gives in another name from the Roll of the county, which has previously been sent to the Queen's Remembrancer. As a rule, the name is adopted and placed on the nomination list. If deaths have occurred or excuses are made and allowed, other names are supplied, so as to make up a list of three names for each county, the names so settled being read out by the Queen's Remembrancer and taken to be nominated as placed on the roll. Excuses, such as lack of sufficient means or illness, or requests to alter the order of names on the roll, may be made in open court. There will have been prior correspondence with the Privy Council, and the clerk to the Privy Council hands up the letters to the Lord Chief Justice who confers as to their contents with those on the bench. As to the procedure generally see 13 L Jo 718. The Roll of a county, which is a private document, is the list of high sheriffs maintained in each Shrievalty by the sheriffs. As to the Queen's Remembrancer see COURTS vol 10 (Reissue) PARA 654; and as to the Privy Council see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 521-526.

3 Sheriffs Act 1887 s 6(1), (4) (amended by the Statute Law Revision Act 1908); Local Government Act 1972 s 219(3) (amended by the Statute Law (Repeals) Act 1993). As to the appointment of sheriffs for Cornwall, Lancashire, Greater Manchester and Merseyside see PARA 1105 post.

4 Sheriffs Act 1887 s 6(1) (amended by the Statute Law Revision Act 1908; and the Statute Law (Repeals) Act 1998). In ancient times sheriffs were elected by the inhabitants of counties, and in some cases the office was hereditary: 1 Bl Com (14th Edn) 339, 340. The elections by the inhabitants were put an end to by 9 Edw 2 Stat 2 (Sheriffs) (1315) (repealed), and the last of the hereditary shrievalties, that of Westmorland, was abolished by 13 & 14 Vict c 30 (Sheriff of Westmorland) (1850) (repealed).

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1103 Nomination of high sheriffs

TEXT AND NOTES 3, 4--Sheriffs Act 1887 s 6(1) further amended: Constitutional Reform Act 2005 Sch 17 para 4, Sch 18 Pt 4.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(1) SHERIFFS/(i) High Sheriffs of Counties/1104. Pricking the sheriffs; warrant of appointment.

1104. Pricking the sheriffs; warrant of appointment.

The names of the persons nominated as high sheriffs are afterwards engrossed on the Roll¹ and presented to the Queen in Council. The Queen appoints the person to serve by pricking with a bodkin² opposite the names in the list of persons nominated, a ceremony known as 'pricking the sheriffs'. One name, usually the first, is pricked for each county, except for the counties of Lancashire, Greater Manchester, Merseyside and Cornwall³. The names of the persons so appointed must then be notified in the London Gazette, and warrants must be made out⁴, signed by the Clerk of the Privy Council and transmitted by him to the persons pricked⁵. The appointments so made are of the same effect as if made by patent under the Great Seal⁶. Within ten days of the date of each warrant of appointment the Clerk of the Privy Council must send a duplicate to the proper officer⁷ of each of the respective county councils, who must enroll and keep it without fee⁸.

1 As to the nomination of sheriffs see PARA 1103 ante; and as to the Roll see PARA 1104 note 2 ante.

2 The bodkin has been variously described as being of silver (see the earlier editions of this work) or golden (Account of the Nomination of Sheriffs at Westminster 1878; 13 L Jo 719). It is understood that the bodkin in present use has a brass handle and a steel shaft.

3 As to the appointment of sheriffs for these counties see PARA 1105 post.

4 For the form of warrant see the Sheriffs Act 1887 s 6(2), Sch 1.

5 Ibid s 6(2).

6 Ibid s 6(2). Prior to 1833, the appointment was made by patent under the Great Seal: see the Fines Act 1833 s 3 (repealed). As to grants under the Great Seal see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 849 et seq.

7 As to proper officers see LOCAL GOVERNMENT vol 69 (2009) PARA 431.

8 Sheriffs Act 1887 s 6(3); Courts Act 1971 s 56(1), Sch 8 para 1(1), (2), (4); Local Government Act 1972 s 251(1), Sch 29 paras 1(1), 4(1). In relation to Wales the Sheriffs Act 1887 s 6(3) (as amended) applies as if it required the duplicate warrant to be transferred to, and enrolled and kept by, the proper officer of the appropriate county or county borough council: Sheriffs Act 1887 s 6(3A)(a) (s 6(3A), (3B) added by the Local Government (Wales) Act 1994 s 62(4)). In that case the Sheriffs Act 1887 s 3(4) (as added) does not apply: s 6(3A)(b) (as so added). In the case of the high sheriff of Greater London (see PARA 1101 note 2 ante), the duplicate must be sent to the proper officer of each London commission area: Administration of Justice Act 1964 s 19(4)(c); Local Government Act 1972 Sch 29 paras 1(1), 4(1). As to the London commission areas see MAGISTRATES vol 29(2) (Reissue) PARA 507. Any question as to which is the appropriate county or county borough council in relation to a particular warrant must be determined by the Secretary of State: Sheriffs Act 1887 s 6(3B) (as so added).

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(1) SHERIFFS/(i) High Sheriffs of Counties/1105. Sheriffs of Lancashire, Greater Manchester, Merseyside and Cornwall.

1105. Sheriffs of Lancashire, Greater Manchester, Merseyside and Cornwall.

The high sheriffs of the counties of Lancashire, Greater Manchester and Merseyside are appointed by the Monarch in right of the Duchy of Lancaster, the list of persons liable to serve being submitted by the Chancellor of the Duchy of Lancaster¹.

The shrievalty of the county of Cornwall is annexed to the Duchy of Cornwall and the appointment of the high sheriff is made by the Prince of Wales as Duke of Cornwall or by the Monarch in the duke's name during his minority and is determinable on his attaining the age of 18².

1 The Sheriffs Act 1887 s 6 (as amended) (see PARAS 1103-1104 ante) does not apply to the appointment of sheriffs of the counties of Lancashire, Greater Manchester or Merseyside: s 6(4) (amended by the Statute Law Revision Act 1908); Local Government Act 1972 s 219(3) (amended by the Statute Law (Repeals) Act 1993). Appointment to the office of sheriff of these counties is notified through the office of the Duchy of Lancaster and not the office of the Lord Chancellor. The Monarch annually receives the Chancellor of the Duchy of Lancaster in private audience for 'pricking' the names on the list of sheriffs for each of the three counties. As to 'pricking' the sheriffs see PARA 1104 ante.

The grant of the office of Sheriff of Lancaster was held by the family of William of Lancaster from the early 13th century. Since 1399, when John of Gaunt's son, Henry of Bolingbroke, came to the throne as Henry IV, the sheriffs of the County Palatine of Lancaster have been appointed by the Monarch in right of the Duchy of Lancaster. The three counties of Lancashire, Greater Manchester and Merseyside were created from within the general area of the original county palatine: see the Local Government Act 1972 s 1(2), Sch 1 Pts I, II; and LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 24. As to the Duchy and County Palatine of Lancaster generally see CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq.

2 Sheriffs Act 1887 s 6(4) (as amended: see note 1 supra), s 37; Duchy of Cornwall Management Act 1863 s 38 (amended by the Family Law Reform Act 1969 s 10(3)); Local Government Act 1972 s 219(3) (as amended: see note 1 supra). See also *Rowe v Brenton* (1828) 3 Man & Ry KB 133. At the request of the office of the Duchy of Cornwall a list of names is put forward for consideration, one name is chosen and the appointment is then duly made and notified in the London Gazette. As to the Duchy of Cornwall generally see CROWN PROPERTY vol 12(1) (Reissue) PARA 318 et seq.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(1) SHERIFFS/(i) High Sheriffs of Counties/1106. Qualification and disqualification.

1106. Qualification and disqualification.

Although there are no age limits on persons eligible for nomination as high sheriffs¹, a person may not be appointed high sheriff of a county unless he has sufficient land within his county to answer the Queen and her people². While holding office, the high sheriff of a county is disqualified both from acting as a justice of the peace for the county³ and from membership of the House of Commons for any constituency comprising the whole or part of the area for which he is appointed⁴.

1 *Young v Fowler* (1640) Cro Car 555 at 556; *Claridge v Evelyn* (1821) 5 B & Ald 81 at 86. However, the nomination of a person who was either very young or over 70 would be discouraged by the Privy Council. As to the nomination of sheriffs see PARA 1103 ante.

2 Sheriffs Act 1887 s 4 (amended by the Local Government Act 1972 s 272(1), Sch 30). What constitutes sufficient land for this purpose has never been laid down. As to persons exempt from liability to serve as sheriff see PARA 1107 post. The requirement to have sufficient land within his or her bailiwick does not apply in relation to any appointment to the office of high sheriff of the county of Rutland of the person who is for the time being high sheriff of the county of Leicestershire: Local Government Changes for England (Sheriffs) Order 1996, SI 1996/2009, art 2(2). As to bailiwicks see PARA 1111 et seq post.

3 Sheriffs Act 1887 s 17. See also *Ex p Colville* (1875) 1 QBD 133. Any acts done by a sheriff contrary to this provision are void: Sheriffs Act 1887 s 17. In its application to Greater London (as to which see PARA 1101 note 2 ante) s 17 is to be construed as referring to a justice of the peace for any of the London commission areas: Administration of Justice Act 1964 s 19(4)(a). As to the London commission areas see MAGISTRATES vol 29(2) (Reissue) PARA 507.

4 See the House of Commons Disqualification Act 1975 s 1(2), Sch 1 Pt IV; and PARLIAMENT vol 78 (2010) PARA 908. See also PARA 1107 post. As the Queen's representative, it is not appropriate for a high sheriff to take part in party politics.

UPDATE

1106 Qualification and disqualification

TEXT AND NOTE 3--For 'for the county' read 'in any local justice area consisting of or including the whole or a part of that county': Sheriffs Act 1887 s 17 (amended by the Courts Act 2003 Sch 8 para 59).

NOTE 3--Administration of Justice Act 1964 s 19(4)(a) substituted: 2003 Act Sch 8 para 117.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(1) SHERIFFS/(i) High Sheriffs of Counties/1107. Exemptions from liability to serve.

1107. Exemptions from liability to serve.

Members of the House of Commons are exempt from liability to assume the office of or serve as high sheriff¹. Officers of the regular military or air forces on the active list are incapable of being nominated for or elected to the office of high sheriff².

A person who has been high sheriff of a county for a whole year may not be appointed high sheriff of that county within the following three years unless there is no other person in the county qualified to fill the office³.

1 As to the qualifications to serve as high sheriff see PARA 1106 ante. A resolution of the House of Commons of 7 January 1689 declares it to be a breach of privilege to nominate any member for the office of high sheriff of a county: 9 Commons Journals 378; 10 Commons Journals 325, 335. See also PARA 1106 ante.

2 See the Army Act 1955 s 182; the Air Force Act 1955 s 182; and ARMED FORCES vol 2(2) (Reissue) PARA 27.

3 Sheriffs Act 1887 s 5.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(1) SHERIFFS/(i) High Sheriffs of Counties/1108. Declaration of office.

1108. Declaration of office.

Before entering on the execution of his office, every high sheriff must make and sign a declaration¹ either before a judge of the High Court or before a justice of the peace of the county for which he is sheriff². On making the declaration the sheriff is entitled, without payment of any fee, to exercise all the powers, privileges and authorities incident to his office³.

The declaration of office must be transmitted to the proper officer⁴ of the appropriate county council and be filed by him among the records of his office⁵.

1 For the form of declaration see the Sheriffs Act 1887 s 7(1), Sch 2 (amended by the Statute Law (Repeals) Act 1978). For the Welsh version of the declaration see the Sheriffs Act 1887 (Welsh Forms) Order 1969, SI 1969/1276 (made under the Welsh Language Act 1967 s 2(1) (repealed); and now continued under the Welsh Language Act 1993 s 26).

2 Sheriffs Act 1887 s 7(1) (amended by the Statute Law Revision Act 1908). In the case of the high sheriff of Greater London (see PARA 1101 note 2 ante), the declaration may be made and signed before a justice of the peace for the appropriate London commission area: Administration of Justice Act 1964 s 19(4)(a). As to the London commission areas see MAGISTRATES vol 29(2) (Reissue) PARA 507.

3 Sheriffs Act 1887 s 6(2). This provision does not apply to the counties of Cornwall, Lancashire, Greater Manchester and Merseyside: s 6(4) (amended by the Statute Law Revision Act 1908); Local Government Act 1972 s 219(3) (amended by the Statute Law (Repeals) Act 1993). As to sheriffs for these counties see PARA 1105 ante. As to a sheriff's tenure of office see PARA 1102 ante; and as to his statutory functions see PARA 1128 et seq post.

4 As to proper officers see LOCAL GOVERNMENT vol 69 (2009) PARA 431.

5 Sheriffs Act 1887 s 30(1) (amended by the Statute Law (Repeals) Act 1981); Courts Act 1971 s 56(1), Sch 8 para 1(1), (2), (4); Local Government Act 1972 s 251(1), Sch 29 paras 1(1), 4(1). In the case of the high sheriff of Greater London the proper officer is the proper officer of each of the London commission areas: Administration of Justice Act 1964 s 19(4)(c); Courts Act 1971 Sch 8 para 1(1), (2), (4); Local Government Act 1972 Sch 29 paras 1(1), 4(1). In practice all the records for the shrievalty within England and Wales are maintained in the office of the Queen's Remembrancer (Central Office, Royal Courts of Justice, Strand, London WC2A 2LL).

UPDATE

1108 Declaration of office

TEXT AND NOTE 2--For 'before a justice ... sheriff' read 'in the county of which he is sheriff before a justice of the peace': Sheriffs Act 1887 s 7(1) (amended by the Courts Act 2003 Sch 8 para 58).

NOTE 2--For 'appropriate London commission area' read 'area specified by virtue of the Administration of Justice Act 1964 s 19(1)': s 19(4) (amended by the Access to Justice Act 1999 Sch 10 para 30(4)(a), (b)).

NOTE 4--For 'proper officer of each of the London Commission areas' read 'the officer specified by the Lord Chancellor by order made by statutory instrument': Administration of Justice Act 1964 s 19(4)(c) (amended by the Access to Justice Act 1999 Sch 10 para 30(4)(c)).

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(1) SHERIFFS/(ii) Sheriffs of the City of London/1109. Election of sheriffs.

(ii) Sheriffs of the City of London

1109. Election of sheriffs.

It is an ancient privilege of the Corporation of the City of London to elect sheriffs for the City¹. Two sheriffs, elected annually, jointly exercise the office of sheriff within the City². The office is held of the corporation, which is answerable to the Crown for its due execution on the part of the sheriffs and their officers³.

The election of the sheriffs of the City takes place on 24 June, unless that date happens to be either a Saturday or Sunday, in which case the election must be held on the Monday next immediately following either of those days⁴, in the Common Hall of Guildhall⁵ from among candidates nominated from: (1) all aldermen who have not yet held the office of sheriff⁶; (2) freemen, not exceeding three in number, nominated by the Lord Mayor between 14 February and 14 April⁷; and (3) freemen nominated in writing by any two liverymen before 1 May⁸. No person may be nominated who has served as sheriff before⁹. Any candidate nominated may withdraw his name by written notice delivered to the Town Clerk¹⁰ before 8 May¹¹. The precepts for the election are issued by the Lord Mayor and the election is decided by a show of hands unless a poll is demanded by any candidate or any two electors¹². A bond of £1,000 is required to be given by the sheriffs-elect for due attendance at Guildhall to be sworn in¹³.

1 See the Sheriffs Act 1887 s 33(1) (amended by the Statute Law Revision Act 1908); and LONDON GOVERNMENT. As to the approval of elections by the Monarch see PARA 1110 post.

From at least the 12th century, under charters granted by the Crown, the sheriffs of the City of London were elected jointly as sheriffs of London and Middlesex: see the 3rd Charter of King John, 5 July 1199, and the Report of the Royal Commission on the Amalgamation of the City and County of London (1894) (C 2nd series 7493) PARAS 6102-6107. However, the right of the Corporation of the City of London to elect the sheriff of Middlesex was abolished by the Local Government Act 1888 s 46(6) (repealed), and the authority of the sheriffs of the City of London now does not extend beyond the City: s 41(8) (repealed). As to the high sheriff of Greater London see PARA 1101 note 2 ante. As to the administration of London generally see LONDON GOVERNMENT.

2 See the Sheriffs Act 1887 s 33(4) (amended by the Statute Law Revision Act 1908; and the Statute Law (Repeals) Act 1998), which applies the Act to the duly elected sheriffs of the City in the same way as it applies to high sheriffs of counties (as to whom see PARA 1101 ante). See also the Report of the Royal Commission on the Amalgamation of the City and County of London (1894) (C 2nd series 7493), App iii, 20, App v, 4, and the Corporation of London, Origin, Constitution, Powers and Duties (1953), PARAS 24-26. See also note 1 supra.

The duties of the sheriffs of the City of London are almost entirely ceremonial, their legal duties being performed by the Secondary (as to whom see PARA 1116 post). They attend the Lord Mayor on state occasions and present petitions on behalf of the corporation to the House of Commons. It is also their privilege to wait on the Monarch, by the direction of the corporation, with the City Remembrancer, to ascertain the royal will and pleasure as to the reception of addresses from the corporation: see the Report of the Royal Commission on the Amalgamation of the City and County of London (1894) (C 2nd series 7493), App iii, 21. See also evidence on sheriffs submitted to the Royal Commission on London Government (1921) (Cmd 1830) by the City of London.

3 See the Report of the Royal Commission on the Amalgamation of the City and County of London (1894) (C 2nd series 7493), App iii, 53, 54. See also the evidence submitted to the Royal Commission on London Government (1921) (Cmd 1830) by the City of London on Sheriffs.

4 Act of Common Council of 21 January 1932 cl 3 (amended by Act of Common Council of 22 March 1973 cl 1). However, the Court of Common Council, by solemn resolution, may appoint some other day for the election: Act of Common Council of 21 January 1932 cl 3. As to the Court of Common Council see LONDON GOVERNMENT.

5 Ibid cll 2, 14.

- 6 Ibid cl 7. Aldermen in their first year in that office are not liable to serve against their will: cl 7 proviso.
- 7 Ibid cl 8; Act of Common Council of 25 June 1998 cl 1.
- 8 Act of Common Council of 21 January 1932 cl 10; Act of Common Council of 4 November 1937 cl 2; Act of Common Council of 25 June 1998 cl 2.
- 9 Act of Common Council of 21 January 1932 cl 24.
- 10 As to the Town Clerk see LONDON GOVERNMENT.
- 11 Act of Common Council of 21 January 1932 cl 12; Act of Common Council of 25 June 1998 cl 3.
- 12 As to the legislation governing and the procedure for such polls see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 56.
- 13 Act of Common Council of 21 January 1932 cl 17.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(1) SHERIFFS/(ii) Sheriffs of the City of London/1110. Approval of election.

1110. Approval of election.

The election of the sheriffs of the City of London¹ must be approved by the Monarch². Approval is signified by royal warrants under the seal of the Chancellor of the Exchequer which are prepared at the Central Office of the Supreme Court³ and delivered to the sheriffs, or their duly authorised agents, without fee, between 30 September and 12 November in every year⁴. Unless the warrants are stayed by order of Her Majesty in Council on or before 30 September the election is deemed to be approved⁵. The sheriffs are sworn in at Guildhall on 28 September unless that date happens to be either a Saturday or a Sunday, in which case then upon the Friday next immediately preceding either of those days⁶.

A person who, having been duly elected, fails to appear to be sworn in is liable to a fine⁷.

1 As to the election of sheriffs in the City of London see PARA 1109 ante.

2 See the evidence submitted to the Royal Commission on London Government (1921) (Cmd 1830) by the City of London on Sheriffs.

3 The documents are prepared in the office of the Queen's Remembrancer (as to which see COURTS), who attests to the seal.

4 Sheriffs Act 1887 s 33(2) (amended by the Statute Law Revision Act 1908). The warrants are filed and recorded in the Central Office of the Supreme Court: Sheriffs Act 1887 s 33(3) (amended by the Statute Laws Revision Act 1908).

5 Sheriffs Act 1887 s 33(2) (as amended: see note 4 supra).

6 Act of Common Council of 21 January 1932 cl 17 (amended by the Act of Common Council of 22 March 1973 cl 3).

7 The fine is £600 for aldermen and £400 for other persons: Act of Common Council of 21 January 1932 cl 18-21. The fine, which is recoverable in the Mayor's and City of London Court (as to which see COURTS), is paid to the City of London's Freeman's School (formerly the Freeman's Orphan School): cl 23.

UPDATE

1110 Approval of election

TEXT AND NOTES 3, 4--As from 1 October 2009 (see SI 2009/1604), Sheriffs Act 1887 s 33 is amended so as to refer to Senior Courts instead of the Supreme Court: Constitutional Reform Act 2005 Sch 11 para 4(1), (3).

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(2) UNDER-SHERIFFS, DEPUTIES, BAILIFFS AND OTHER OFFICERS/(i) Under-Sheriffs/1111. Appointment and jurisdiction.

(2) UNDER-SHERIFFS, DEPUTIES, BAILIFFS AND OTHER OFFICERS

(i) Under-Sheriffs

1111. Appointment and jurisdiction.

Every high sheriff¹ is required, within one month of the notification of his appointment in the London Gazette, to appoint by writing under his hand a fit person² to be his under-sheriff³. The high sheriff must send a duplicate of the written appointment to the proper officer of the county council, who must file it in his records⁴.

The area for which an under-sheriff acts is known as a bailiwick⁵, each bailiwick being the same area as that for which an under-sheriff acted prior to the reorganisation of local government in 1974⁶. One of the effects of the reorganisation was that some of the old counties, together with a number of cities and towns which had been counties in themselves, for which high sheriffs and therefore under-sheriffs had been appointed, disappeared. Thus, many of the bailiwicks do not have the same boundaries as the new counties for which high sheriffs are appointed⁷, with the result that in many cases there are two or more bailiwicks within a county and a bailiwick may be situated in more than one county⁸. Where a bailiwick is situated in two or more counties⁹, the duty of appointing the under-sheriff for that area must be discharged by the high sheriff of the county containing the greater part of that area¹⁰, after consulting any other high sheriff concerned¹¹.

1 As to the meaning of 'high sheriff' see PARA 1101 note 1 ante.

2 Although there are no particular qualifications for the office of under-sheriff, a solicitor of standing is usually appointed.

3 Sheriffs Act 1887 s 23(1). In the case of Greater London (as to which see PARA 1101 note 2 ante) the high sheriff is required to appoint an under-sheriff for each of the London commission areas (see the Administration of Justice Act 1964 s 19(1)), although in recent practice the same person has been appointed for each area. As to the London commission areas see MAGISTRATES vol 29(2) (Reissue) PARA 507. As to the under-sheriff of the City of London see PARA 1116 post.

4 Sheriffs Act 1887 s 23(1); Courts Act 1971 s 56(1), Sch 8 para 1(1), (2), (4); Local Government Act 1972 s 251(1), Sch 29 paras 1(1), 4(1). As to proper officers see LOCAL GOVERNMENT vol 69 (2009) PARA 431. As to the office of under-sheriff see PARA 1112 et seq post.

5 Under-Sheriffs' Bailiwicks Order 1974, SI 1974/222, art 2(1) (made under the Local Government Act 1972 s 219(4)). See also note 8 infra.

6 Under-Sheriffs' Bailiwicks Order 1974, SI 1974/222, art 2(2). However, in the area for which the under-sheriff of Glamorgan acted before the reorganisation there are two bailiwicks, Glamorgan and Swansea: see art 3, Schedule. As to the reorganisation of local government effected by the Local Government Act 1972 see LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq.

7 As to the appointment of high sheriffs of counties see PARA 1101 ante.

8 Although a writ of execution (as to which see PARA 1132 post) must be directed to the high sheriff of the county in which the writ is to be executed, it must be sent to the same under-sheriff as it would have been sent to prior to the reorganisation of 1974, notwithstanding that his bailiwick is situated in a different county. Thus, a writ for execution at an address near Gatwick Airport will be addressed to the high sheriff of West Sussex, in

which county the airport is now situated, but will be sent for execution to the under-sheriff of Surrey, whose bailiwick extends to the whole of the old county of Surrey in which the airport was previously situated. By arrangement with the Queen's Remembrancer and the Under-Sheriffs' Association the list of High Sheriffs and Under-Sheriffs' Bailiwicks, which is maintained in the High Court and in each district registry, has an asterisk against the name of one under-sheriff for each county in which there is more than one bailiwick, indicating that that under-sheriff will answer inquiries to ascertain the high sheriff to whom the writ should be directed and the under-sheriff to whom it should be sent for execution.

The following list shows, as regards England, each shrievalty of a high sheriff to whom a writ is to be directed and, in parentheses, the bailiwick or bailiwicks of the under-sheriff with whom the writ is to be lodged: Greater London (Greater London); City of London (City of London); *Metropolitan counties*: Greater Manchester (Lancashire*; Cheshire; Yorkshire); Merseyside (Lancashire*; Cheshire); South Yorkshire (Yorkshire*; Hallamshire; Nottinghamshire); Tyne and Wear (City of Newcastle upon Tyne; Northumberland*; Durham); West Midlands (Staffordshire; Worcestershire; Warwickshire*); West Yorkshire (Yorkshire); *Non-metropolitan counties*: Avon (Somerset*; City of Bristol; Gloucestershire); Bedfordshire (Bedfordshire); Berkshire (Berkshire*; Buckinghamshire); Buckinghamshire (Buckinghamshire); Cambridgeshire (Cambridgeshire and Isle of Ely; Huntingdonshire and Peterborough); Cheshire (City of Chester; Lancashire; Cheshire*); Cleveland (Durham*; Yorkshire); Cornwall (Cornwall); Cumbria (Lancashire; Cumberland*; Westmorland; Yorkshire); Derbyshire (Derbyshire*; Cheshire); Devon (City of Exeter; Devonshire); Dorset (Hampshire; Dorset*; Borough of Poole); Durham (Durham*; Yorkshire); East Sussex (Sussex); Essex (Essex); Gloucestershire (City of Gloucester; Gloucestershire*); Hampshire (Hampshire*; Southampton Town); Hereford and Worcester (City of Worcester; Herefordshire; Worcestershire*); Hertfordshire (Hertfordshire); Humberside (Lincolnshire; City of Kingston-upon-Hull; Yorkshire*); Isle of Wight (Hampshire); Kent (City of Canterbury; Kent); Lancashire (Lancashire*; Yorkshire); Leicestershire (Leicestershire*; Rutlandshire); Lincolnshire (City of Lincoln; Lincolnshire); Norfolk (City of Norwich; Norfolk*; Suffolk); North Yorkshire (City of York; Yorkshire*); Northamptonshire (Northamptonshire); Northumberland (Northumberland; Berwick upon Tweed); Nottinghamshire (City of Nottingham; Nottinghamshire*); Oxfordshire (Oxfordshire*; Berkshire); Rutlandshire (Leicestershire*) Salop (Shropshire); Somerset (Somersetshire); Staffordshire (Staffordshire*; City of Lichfield); Suffolk (Suffolk); Surrey (Surrey); Warwickshire (Warwickshire); West Sussex (Sussex*; Surrey); Wiltshire (Wiltshire).

The following list shows, in the same way, the shrievalties and bailiwicks for Wales: Clwyd (Flintshire*; Denbighshire; Merionethshire); Dyfed (Cardiganshire; Carmarthenshire; Town of Carmarthen; Pembrokeshire*; Town of Haverfordwest); Gwent (Monmouthshire*; Breconshire); Gwynedd (Anglesey; Caernarvonshire*; Merionethshire; Denbighshire); Mid-Glamorgan (Glamorganshire*; Breconshire; Monmouthshire); Powys (Montgomeryshire*; Radnorshire; Breconshire); South Glamorgan (Glamorganshire*; Monmouthshire); West Glamorgan (Glamorganshire districts of Afan and Neath; Glamorganshire districts of Swansea and Lliw Valley).

9 'County', in the Local Government Act 1972 s 219(5), includes Greater London and the City of London (including the Temples): see ss 219(5), 270(1) (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq.

10 Any question as to which county contains the greater part of a bailiwick is decided by the Lord Chancellor: *ibid* s 219(5).

11 *Ibid* s 219(5).

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(2) UNDER-SHERIFFS, DEPUTIES, BAILIFFS AND OTHER OFFICERS/(i) Under-Sheriffs/1112. Declaration and tenure of office; security.

1112. Declaration and tenure of office; security.

Before entering on the execution of his office¹ every under-sheriff must make a declaration in similar form to that made by the high sheriff² either before a judge of the High Court or before a justice of the peace for the county for which he is appointed³. On his appointment an under-sheriff may execute an indemnity, with sureties, in favour of each high sheriff whose bailiwick⁴ covers the area administered by the under-sheriff for the due and faithful discharge of his duties, and either may indemnify the high sheriff against any liability for breach of duty on his part or on the part of his servants in the execution of the office or may arrange for appropriate insurance cover.

An under-sheriff may be removed at the pleasure of the high sheriff even though his appointment is purported to be irrevocable⁵. Otherwise, the office of under-sheriff comes to an end on the expiration of that of the high sheriff who appointed him⁶, although he may be reappointed by the sheriff's successor.

1 As to the appointment of under-sheriffs see PARA 1111 ante.

2 For the form of declaration see the Sheriffs Act 1887 s 23(3) (as amended: see note 3 infra), Sch 2 (amended by the Statute Law (Repeals) Act 1978). As to the meaning of 'high sheriff' see PARA 1101 note 1 ante.

3 Sheriffs Act 1887 s 23(3) (amended by the Statute Law Revision Act 1908). The under-sheriff of any London commission area (see PARA 1111 note 3 ante) may make his declaration before a justice of the peace for any of the London commission areas: Administration of Justice Act 1964 s 19(4)(a).

4 As to bailiwicks see PARA 1111 ante.

5 Com Dig, Viscount (B1); *Norton v Simmes* (1614) Hob 12.

6 Com Dig, Viscount (B1). As to the effect of the death of the high sheriff see PARA 1115 post.

UPDATE

1112 Declaration and tenure of office; security

TEXT AND NOTE 3--For 'before a justice of the peace for the county for which he is appointed' read 'in the county for which such under-sheriff is appointed before a justice of the peace': Sheriffs Act 1887 s 23(3) (amended by the Courts Act 2003 Sch 8 para 60).

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(2) UNDER-SHERIFFS, DEPUTIES, BAILIFFS AND OTHER OFFICERS/(i) Under-Sheriffs/1113. Prohibition of sale or letting of office.

1113. Prohibition of sale or letting of office.

The office of under-sheriff may not, directly or indirectly, be bought or sold, nor may any valuable consideration be given or received for the office¹. However, this prohibition does not prevent the high sheriff² or under-sheriff from demanding and taking the lawful fees and perquisites relating to the office or from accounting or giving security to account, and does not prevent the high sheriff from giving or the under-sheriff from receiving a salary or remuneration for the execution of the office³.

1 See the Sheriffs Act 1887 s 27(1) (amended by the Statute Law (Revision) Act 1998). This provision also applies to deputy-sheriffs (see PARAS 1117-1118 post), and to bailiffs and other sheriffs' officers (see PARA 1121 post). Any person other than an under-sheriff, deputy-sheriff, bailiff or other officer who acts in contravention of the Sheriffs Act 1887 s 27 (as amended) is liable to the same punishment as if he were an under-sheriff, deputy-sheriff, bailiff or officer: s 27(2). As to penalties for misconduct see PARA 1155 post.

2 As to the meaning of 'high sheriff' see PARA 1101 note 1 ante.

3 Sheriffs Act 1887 s 27(3). As to fees and accounts see PARA 1123 et seq post.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(2) UNDER-SHERIFFS, DEPUTIES, BAILIFFS AND OTHER OFFICERS/(i) Under-Sheriffs/1114. Duties and powers.

1114. Duties and powers.

The under-sheriff usually performs all the duties of the office of high sheriff¹, subject to certain exceptions where the personal presence of the high sheriff is necessary². In respect of the area for which he acts³ the under-sheriff is treated as the deputy of the high sheriff for the purpose of all the functions of the high sheriff except those as returning officer at parliamentary elections⁴.

An under-sheriff has all the powers incident to the sheriff's office which are not personal to the high sheriff, and a covenant or condition in restraint of such powers is void⁵. By virtue of his office an under-sheriff has authority, in the course of the execution of the office, to execute a deed in the name and under the seal of the high sheriff⁶. However, in all cases it is the duty of the under-sheriff to act in the name of the high sheriff⁷ and any action in respect of the non-performance of the duties of the office must be brought against the high sheriff, who alone is liable⁸.

1 As to the meaning of 'high sheriff' see PARA 1101 note 1 ante. As to the duties and functions of the high sheriff see PARA 1128 et seq post; and as to the circumstances in which an under-sheriff is required to act as high sheriff see PARA 1115 post.

2 1 Bl Com (14 Edn) 345; Com Dig, Viscount (B1).

3 See PARA 1111 ante.

4 Local Government Act 1972 s 219(6). As to the functions of a high sheriff in connection with parliamentary elections see PARA 1129 post.

5 Eg a covenant or condition by an under-sheriff that he will not execute process for a sum in excess of a certain amount without a warrant from the high sheriff will be void: *Boucher v Wiseman* (1595) Cro Eliz 440; *Chamberlaine v Goldsmith* (1609) 2 Brownl 280; *Norton v Simmes* (1614) Hob 12; *Parker v Kett* (1701) 1 Salk 95. See also Com Dig, Viscount (B1).

6 *Doe d James v Brawn* (1821) 5 B & Ald 243 (assignment by deed of a term of years in execution); *Wood v Rowcliffe* (1846) 6 Hare 183 at 186 (bill of sale by under-sheriff).

7 *Parker v Kett* (1701) 1 Salk 95.

8 *Cameron v Reynolds* (1776) 1 Cowp 403; *Scarfe v Hallifax* (1840) 7 M & W 288. As to the liability of a high sheriff for the acts of his officers see PARA 1146 et seq post.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(2) UNDER-SHERIFFS, DEPUTIES, BAILIFFS AND OTHER OFFICERS/(i) Under-Sheriffs/1115. Duty to act as high sheriff in certain cases.

1115. Duty to act as high sheriff in certain cases.

Where a high sheriff¹ dies before the expiration of his year of office or before his successor has entered on the office, his under-sheriff nevertheless continues in office, and it is his duty to exercise the office of high sheriff in the name of the deceased sheriff until another high sheriff for the county has been appointed and made the declaration of office². The under-sheriff is answerable for the execution of the office as the deceased sheriff would have been if living and the security given to the deceased sheriff³ operates as security to the Crown and all other persons for the due execution by the under-sheriff of the offices of high sheriff and under-sheriff⁴.

1 As to the meaning of 'high sheriff' see PARA 1101 note 1 ante.

2 Sheriffs Act 1887 s 25(1). However, this provision does not authorise the under-sheriff to discharge the duties of returning officer, and upon a sheriff's death the acting returning officer must discharge all the sheriff's duties as returning officer until another sheriff is appointed and has made the declaration of office: Representation of the People Act 1983 s 28(6). As to the appointment of high sheriffs see PARA 1101 et seq ante; and as to their duties as returning officers see PARA 1129 post. As to the office of acting returning officer see ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 355 et seq.

3 See PARA 1112 ante.

4 Sheriffs Act 1887 s 25(1). See also *Gloucestershire Banking Co v Edwards* (1887) 20 QBD 107, CA, where the executors of a deceased under-sheriff, who had acted in the place of a deceased high sheriff, were held liable to execution creditors for a sum improperly deducted by the under-sheriff for charges to which he was not entitled. As to the power of an under-sheriff to appoint a deputy on the death of the high sheriff see PARA 1118 post.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(2) UNDER-SHERIFFS, DEPUTIES, BAILIFFS AND OTHER OFFICERS/(i) Under-Sheriffs/1116. Secondary and under-sheriff of the City of London.

1116. Secondary and under-sheriff of the City of London.

In the City of London¹ the Secondary², who is appointed by the Court of Aldermen³, occupies a similar position to that of an under-sheriff⁴ and performs, in the names of the sheriffs, all the duties ordinarily incident to the office of an under-sheriff⁵. The office of Secondary is held of the Corporation of the City of London, which is liable to the Crown for any breach of duty on his part⁶.

1 As to the appointment of sheriffs for the City of London see PARAS 1109-1110 ante.

2 The Secondary's full title is 'Secondary of the City of London and Under-Sheriff, High Bailiff of Southwark'. See also note 5 infra.

3 As to the Court of Aldermen see LONDON GOVERNMENT.

4 As to under-sheriffs see PARA 1111 et seq ante.

5 The appointment and duties of the Secondary and Under-Sheriff together with a list of the establishment of the department are contained in the Report of the Establishment Committee 'Central Criminal Court Administration' which was presented to and approved by the Court of Common Council on 27 June 1968, as amended by the Report of the City Secretary relative to the Management Review at the Central Criminal Court which was approved by the Establishment Committee on 19 November 1998. The functions of the Secondary relating to the preparation of registers of electors and jury lists were transferred to the Town Clerk by the City of London (Various Powers) Act 1968 s 3 (as amended): see LONDON GOVERNMENT.

6 Report of the Royal Commission on the Amalgamation of the City and County of London (1894) (C 2nd series 7493) App iii, 53-55.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(2) UNDER-SHERIFFS, DEPUTIES, BAILIFFS AND OTHER OFFICERS/(ii) Deputies/1117. London deputy.

(ii) Deputies

1117. London deputy.

Every high-sheriff¹ is required to appoint a sufficient deputy, who must reside or have an office within a mile from the Inner Temple Hall, for the receipt of writs, the granting of warrants, the making of returns, and the acceptance of all rules and orders to be made on or touching the execution of any process or writ directed to the sheriff². The delivery of a writ to the London deputy operates as a delivery to the sheriff³, and the writ obtains priority as from the time of delivery⁴.

1 As to the meaning of 'high sheriff' see PARA 1101 note 1 ante.

2 Sheriffs Act 1887 s 24. As to the execution of writs see PARA 1132 post.

3 *Woodland v Fuller* (1840) 11 Ad & El 859 at 867.

4 Under the Supreme Court Act 1981 s 138(1), a writ of fieri facias or other writ of execution against goods issued from the High Court binds the property in the goods of the execution debtor as from the time it is delivered to the sheriff to be executed. It is, therefore, the duty of a sheriff to indorse on the back of the writ the hour, day, month and year when he received the writ: see s 138(3). See also CIVIL PROCEDURE.

UPDATE

1117 London deputy

NOTE 4--Supreme Court Act 1981 (now Senior Courts Act 1981) s 138 repealed: Courts Act 2003 Sch 8 para 264, Sch 10.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(2) UNDER-SHERIFFS, DEPUTIES, BAILIFFS AND OTHER OFFICERS/(ii) Deputies/1118. Deputy of under-sheriff.

1118. Deputy of under-sheriff.

Where an under-sheriff is under the duty to act as high-sheriff¹ he may by writing appoint a deputy². Before the deputy sheriff takes upon himself the execution of any writ issued by a court of record³ he must make a declaration⁴ as to the manner in which he will exercise his office⁵.

An under-sheriff has no power to appoint a deputy in any other circumstances, although he may authorise another to do a particular act⁶.

1 He is due to the death of the high sheriff: see PARA 1115 ante. As to the meaning of 'high sheriff' see PARA 1101 note 1 ante.

2 Sheriffs Act 1887 s 25(2). A deputy sheriff may not sell or let his office: see s 27(1), (2) (s 27(1) as amended); and PARA 1113 ante.

3 As to courts of record see COURTS.

4 For the form of declaration see the Sheriffs Act 1887 s 26 (as amended: see note 5 infra), Sch 2 (amended by the Courts Act 1971 s 56(4), Sch 11 Pt I).

5 Sheriffs Act 1887 s 26 (amended by the Statute Law Revision Act 1908; the Courts Act 1971 Sch 11 Pt I; the Local Government Act 1972 s 272(1), Sch 30; and the Statute Law (Repeals) Act 1981). The declaration, which is exempt from stamp duty, must be made before a judge of the High Court or before a justice of the peace for the county in which the deputy exercises authority or, in the case of a deputy in Greater London (see PARA 1101 note 2 ante), before a justice of the peace for any of the London commission areas: Sheriffs Act 1887 s 26 (as so amended); Administration of Justice Act 1964 s 19(4)(a). As to the London commission areas see MAGISTRATES vol 29(2) (Reissue) PARA 507.

6 *Parker v Kett* (1701) 1 Salk 95.

UPDATE

1118 Deputy of under-sheriff

TEXT AND NOTES 4, 5--Sheriffs Act 1887 s 26 further amended: Courts Act 2003 Sch 8 para 61.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(2) UNDER-SHERIFFS, DEPUTIES, BAILIFFS AND OTHER OFFICERS/(iii) Sheriff's Officers/1119. Appointment and nature of office.

(iii) Sheriff's Officers

1119. Appointment and nature of office.

Sheriff's officers, are appointed by high sheriffs¹ for the purpose of executing writs and processes². Before a sheriff's officer takes upon himself the execution of any writ issued by a court of record³ he must make a declaration⁴ as to the manner in which he will exercise his office⁵.

A sheriff's officer may be required to give to the sheriff a bond, with sureties, for the due execution of the office and the accounting to the sheriff for the fees⁶ received, and indemnifying him against liability for any breach of duty on the officer's part⁷. Officers who have given such a bond are sometimes called 'bound bailiffs'⁸. Alternatively, the sheriff's officer will arrange for appropriate insurance cover.

The office of sheriff's officer being one of responsibility and trust, a minor cannot be appointed⁹. The office is a personal one, and cannot be executed by a deputy¹⁰, nor is any partnership possible between two officers so as to render the acts of one binding on the other¹¹. All sheriff's officers are disqualified from holding licences to retail intoxicating liquor¹².

It is an offence for any sheriff's officer to take or demand money other than the statutory fees allowed¹³.

The Bailiffs of Jersey and Guernsey have special powers and are appointed by the Crown¹⁴.

1 As to the meaning of 'high sheriff' see PARA 1101 note 1 ante. The larger counties have full time sheriff's officers paid either by salary or by retaining certain of the sheriff's fees. Smaller counties have part-time officers. As to bailiffs of the City of London see PARA 1120 post; and as to special bailiffs see PARA 1122 post.

2 1 Bl Com (14 Edn) 345. See also CIVIL PROCEDURE. As to county court bailiffs see COURTS. References to a high bailiff (the office of which has been abolished: see COURTS vol 10 (Reissue) PARA 727) in any enactment, Order in Council, order, rule, regulation or other document must be construed as a reference to a district judge of a county court: County Courts Act 1984 s 148(2), Sch 3 para 7. As to district judges see COURTS.

3 As to the meaning of 'court of record' see COURTS.

4 For the form of declaration, which is the same as that required from a deputy sheriff see the Sheriff's Act 1887 s 26, Sch 2 (both as amended); and PARA 1118 ante.

5 Ibid s 26 (amended by the Statute Law Revision Act 1908; the Courts Act 1971 s 56(4), Sch 11 Pt I; the Local Government Act 1972 s 272(1), Sch 30; and the Statute Law (Repeals) Act 1981). The declaration must be made in the same way as that of a deputy sheriff: see the Sheriffs Act 1887 s 26 (as so amended); and PARA 1118 note 5 ante.

6 As to the fees of sheriffs and sheriffs' officers see PARA 1123 et seq post.

7 As to sheriffs' liability for the acts of their officers see PARA 1146 et seq post.

8 1 Bl Com (14 Edn) 346. In *Farebrother v Worsley* (1831) 5 C & P 102, it was held that a sheriff who defended an action for a false return as well as he could was entitled to recover his costs from the sureties of the bailiff who executed the writ, although the verdict was given against the sheriff on the ground of the non-production of certain evidence which ought to have been produced. See also *Cook v Palmer* (1827) 6 B & C 739; *Farebrother v Worsley* (1831) 1 Tyr 424.

- 9 *Cuckson v Winter* (1828) 2 Man & Ry KB 313 at 317.
- 10 *Jackson v Hill* (1839) 10 Ad & El 477 at 484 per Patteson J.
- 11 *Jons v Perchard* (1794) 2 Esp 507.
- 12 See the Licensing Act 1964 s 9(1)(a).
- 13 See the Sheriffs Act 1887 ss 20(3), 29(2) (both as amended); and PARAS 1123, 1151 post.
- 14 See COMMONWEALTH vol 13 (2009) PARAS 792-798.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(2) UNDER-SHERIFFS, DEPUTIES, BAILIFFS AND OTHER OFFICERS/(iii) Sheriff's Officers/1120. City of London.

1120. City of London.

In the City of London¹ the bound bailiffs² are called 'serjeants-at-mace' and their assistants 'yeomen'. It is the duty of the Secondary³ to take securities on behalf of the sheriffs from the serjeants-at-mace.

- 1 As to the sheriffs of the City of London see PARA 1109 ante.
- 2 As to bound bailiffs see PARA 1119 ante.
- 3 As to the Secondary of the City of London see PARA 1116 ante.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(2) UNDER-SHERIFFS, DEPUTIES, BAILIFFS AND OTHER OFFICERS/(iii) Sheriff's Officers/1121. Prohibition on sale or letting of office.

1121. Prohibition on sale or letting of office.

The statutory prohibition on the sale or letting of the office of under-sheriff¹ also applies to the office of bailiff or any other office or place appertaining to the high sheriff². However, this does not prevent a sheriff's officer from accounting to the sheriff for fees received in respect of his office³ or from giving security so to account, nor does it prevent a sheriff from giving nor an officer from receiving a salary or remuneration for the execution of his office⁴.

1 le the Sheriffs Act 1887 s 27(1) (as amended); see PARA 1113 ante.

2 See *ibid* s 27(1), (2) (s 27(1) as amended); and PARA 1113 ante. As to the meaning of 'high sheriff' see PARA 1101 note 1 ante.

3 As to fees see PARA 1123 et seq post.

4 Sheriffs Act 1887 s 27(3).

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(2) UNDER-SHERIFFS, DEPUTIES, BAILIFFS AND OTHER OFFICERS/(iii) Sheriff's Officers/1122. Special bailiffs.

1122. Special bailiffs.

The term 'special bailiff' refers to a particular officer appointed by a high sheriff¹ to execute a writ at the request of the person issuing the writ². Such an officer is regarded, as between the person issuing the writ and the sheriff, as the agent of that person rather than of the sheriff, thus exonerating the sheriff, as a general rule, from liability to the person issuing the writ for any misconduct or breach of duty on the part of the officer in the execution of the writ³.

A mere request by an execution creditor or his solicitor that a particular officer may be employed to execute the writ does not necessarily constitute the officer a special bailiff⁴, even if it is coupled with information given direct to the officer to assist him in the execution of the writ⁵. However, if the execution creditor or his solicitor requests that the warrant be directed to a particular officer, and instructs him as to the manner in which the writ is to be executed, the officer is thereby constituted a special bailiff of the execution creditor⁶.

1 As to the appointment of bailiffs see PARA 1119 ante; and as to the meaning of 'high sheriff' see PARA 1101 note 1 ante.

2 Such an appointment is rare but might be made where the plaintiff sought special expertise in the bailiff, eg on an execution involving the seizure and sale of specialised goods. The sheriff may require the special bailiff to make a declaration under the Sheriffs Act 1887 s 26 (as amended) (see PARA 1119 ante) before issuing his warrant to him. A special bailiff must account to the sheriff for the sheriff's fees levied under the warrant against the defendant but the bailiff may make an arrangement with the plaintiff for the terms of his employment by the plaintiff. As to fees see PARA 1123 et seq post.

3 As to sheriffs' liability for the acts of their officers see PARA 1146 et seq post.

4 *Balson v Meggat* (1836) 4 Dowl 557; *Corbet v Brown* (1838) 6 Dowl 794; *Seal v Hudson* (1847) 4 Dow & L 760.

5 *Alderson v Davenport* (1844) 13 M & W 42 at 46.

6 *Doe v Trye* (1839) 7 Dowl 636; *Alderson v Davenport* (1844) 13 M & W 42.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(3) FEES, POUNDAGE AND ACCOUNTS/1123. Statutory right to fees and poundage.

(3) FEES, POUNDAGE AND ACCOUNTS

1123. Statutory right to fees and poundage.

A high sheriff¹ or his officer² concerned in the execution of process directed to the sheriff³ may only demand, take and receive such fees and poundage as are prescribed⁴, and may not take, directly or indirectly, any reward for doing, or abstaining from doing, his duty or in respect of the mode in which he executes his office or duty, other than such fees or poundage⁵.

Before any prescribed fees become payable a formal seizure must have been made under the warrant of execution⁶.

1 As to the meaning of 'high sheriff' see PARA 1101 note 1 ante.

2 As to sheriffs' officers see PARA 1111 et seq ante.

3 As to the execution of process see PARA 1132 et seq post.

4 The Lord Chancellor is empowered to fix, with the advice and consent of the judges of the Court of Appeal and the High Court, or any three of them, and with Treasury concurrence, the fees and rate of poundage which are allowed: Sheriffs Act 1887 s 20(2) (amended by the Statute Law Revision Act 1908). For the amounts of fees and the rate of poundage see the Order dated 8 July 1920, SR & O 1920/1250 (as amended); the Order dated 2 May 1921, SR & O 1921/827 (as amended); and PARA 1139 et seq post. Special bailiffs (as to whom see PARA 1122 ante) are not bound by the statutory scale of fees and charges: see CIVIL PROCEDURE. As to expenses in relation to the levying of distress see DISTRESS vol 13 (2007 Reissue) PARA 1058.

For cases where sheriffs' expenses in excess of the prescribed fees and rate of poundage were disallowed see *Slater v Hames* (1841) 7 M & W 413; *Davies v Edmonds* (1843) 12 M & W 31, where it was held that on the execution of a writ of fieri facias the sheriff was not entitled to the extra expense incurred by keeping two men in possession for the protection of the property against an adverse claim as such expense was not included in the statutory table of fees; *Phillips v Viscount Canterbury* (1843) 11 M & W 619, where the sheriff was not allowed to deduct the expenses of disposing of goods seized under a writ of fieri facias by appraisement and sale because the prescribed fees only covered sales by auction; *Gill v Jose* (1856) 6 E & B 718, where, although it was proved to be customary in the particular county to take more than the prescribed mileage, the excess was disallowed; *Halliwell v Heywood* (1862) 10 WR 780, where it was held to be extortion to charge for a second man in possession under a writ of fieri facias; *Braithwaite v Marriott* (1862) 1 H & C 591; *Re Ludmore* (1884) 13 QBD 415, where it was held that when a debtor's bankruptcy supervenes after seizure, but before sale, by a sheriff acting under a writ of fieri facias, the 'costs of execution' under what is now the Insolvency Act 1986 s 346, do not include poundage; *Re Thomas, ex p Sheriff of Middlesex* [1899] 1 QB 460, CA (similar case). See also *Re Woodham, ex p Conder* (1887) 20 QBD 40, where the expenses of reaping growing crops were disallowed; *Lee v Dangar, Grant & Co* [1892] 2 QB 337, CA, where it was held that a sheriff's officer was not entitled to rely on a writ of fieri facias in the County of London under a writ paid out under fieri facias in the City of London. As to the effect of taking excess fees and poundage see PARA 1124 post.

5 See the Sheriffs Act 1887 s 20(2) (amended by the Statute Law Revision Act 1908); the Sheriffs Act 1887 s 20(3) (amended by the Statute Law (Repeals) Act 1998). For an analysis of the right to poundage see *Mortimore v Cragg, ex p Sheriff of Surrey* (1878) 3 CPD 216 at 219, CA, per Brett LJ. See also *Montague v Davies, Benachi & Co* [1911] 2 KB 595 at 605, DC, where the development of the sheriff's right to fees and the earlier cases are considered. As to the levy of fees and poundage see PARA 1125 post.

The fees and emoluments of the sheriffs of the City of London (as to whom see PARA 1109 ante) are retained by the Corporation of the City of London and it is the duty of the Secondary (as to whom see PARA 1116 ante) to account to the Chamberlain for all fees in respect of the execution of process at the end of every three months: Report of the Royal Commission on the Amalgamation of the City and County of London (1894) (C 2 series 7493) App iii 21, 54, 55.

6 *Nash v Dickenson*(1867) LR 2 CP 252. Whether or not a seizure has been made is a question of fact: *Lloyds and Scottish Finance Ltd v Modern Cars and Caravans (Kingston) Ltd*[1966] 1 QB 764, [1964] 2 All ER 732. As to seizure see PARA 1140 post; and CIVIL PROCEDURE vol 12 (2009) PARA 1328 et seq.

UPDATE

1123 Statutory right to fees and poundage

NOTE 4--The Lord Chancellor's function under the Sheriffs Act 1887 s 20 is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Insolvency Act 1986 s 346 amended: Courts Act 2003 Sch 8 para 297.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(3) FEES, POUNDAGE AND ACCOUNTS/1124. Taking excess fees.

1124. Taking excess fees.

If a sheriff's bailiff or officer¹ takes too large a sum in respect of fees or poundage², an action based on an implied contract will lie against the sheriff for the excess, without any proof that the money has come to his hands³. Such an action survives against the sheriff's executors or administrators⁴.

A sheriff may not take a bond for his fees⁵ because under colour of it he might recover more than the fees allowed⁶, and a sheriff or under-sheriff is not entitled to refuse to execute process until his fees have been paid⁷. An express promise to pay extra remuneration for the execution of process is void⁸.

1 As to bailiffs and officers see PARA 1119 et seq ante.

2 As to the right to fees and poundage see PARA 1123 ante.

3 *Jons v Perchard* (1794) 2 Esp 507; *Dew v Parsons* (1819) 2 B & Ald 562; *Blake v Newburn* (1848) 5 Dow & L 601. See also CIVIL PROCEDURE; RESTITUTION; FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 1257-1259. As to the liability of a sheriff or his officers to punishment for extortion see PARA 1155 post.

4 *Gloucestershire Banking Co v Edwards* (1887) 20 QBD 107, CA.

5 As to bonds by under-sheriffs and bailiffs see PARAS 1112, 1119 ante.

6 *Lyster v Bromley* (1632) Cro Car 286.

7 *Hescott's Case* (1694) 1 Salk 330. If a sheriff or under-sheriff does so refuse he is liable to an action for not doing his duty or, if the fees are paid, to punishment for extortion: *Hescott's Case* supra.

8 *Bridge v Cage* (1605) Cro Jac 103.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(3) FEES, POUNDAGE AND ACCOUNTS/1125. Levy of fees, poundage and expenses.

1125. Levy of fees, poundage and expenses.

Subject to one exception¹, the amount of the fees, poundage and expenses of the execution² may be levied over and above the sum recovered³, even though the judgment creditor may not be entitled to the costs of the action in which the judgment was obtained⁴. The amount of the fees allowed may be levied even though they are not indorsed on the writ of execution, and it is not necessary for the sheriff to particularise the respective items in his return to the writ⁵. If, after seizure, the judgment creditor becomes disentitled to recover the amount of the debt, the sheriff is not entitled to sell any portion of the goods seized for the purpose of paying his fees and expenses⁶.

The exception to the right so to levy fees, poundage and expenses is where the judgment or order to be executed is for less than £600 and does not entitle the plaintiff to costs against the person against whom the writ of fieri facias to enforce the judgment or order is issued⁷.

1 See the text to note 7 infra.

2 As to costs and expenses of execution generally see CIVIL PROCEDURE.

3 The right to levy fees, poundage and expenses is expressly incorporated in the prescribed forms of writs of execution. As to the statutory right to fees and poundage see PARA 1123 ante; and as to the amounts allowed see PARA 1139 et seq post.

4 *Armitage v Jessop* (1866) LR 2 CP 12, where it was held that costs of execution are not costs of the action.

5 *Curtis v Mayne* (1842) 2 Dowl NS 37. As to the recovery of sheriff's charges under a writ of possession see PARA 1144 post; and as to the return to the writ see PARA 1136 post.

6 *Sneary v Abdy* (1876) 1 Ex D 299, DC, where the sheriff was held liable to the execution debtor as for an unlawful sale. See also *Goode v Langley* (1827) 7 B & C 26.

7 RSC Ord 47 r 4; CPR Sch 1 RSC Ord 47 r 4. In such a case the writ may not authorise the sheriff to whom it is directed to levy any fees, poundage or other costs of execution.

UPDATE

1125 Levy of fees, poundage and expenses

TEXT AND NOTE 7--CPR Sch 1 RSC Ord 47 r 4 amended: SI 2003/3361.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(3) FEES, POUNDAGE AND ACCOUNTS/1126. Right to sue creditor for fees.

1126. Right to sue creditor for fees.

If a high sheriff¹ is unable, without any default on his part, to levy his fees against the execution debtor², he has a right of action for them against the execution creditor by whom or on whose behalf he was requested to execute the writ of execution³. Where the execution is withdrawn, satisfied or stopped the sheriff's statutory fees⁴ must be paid either by the person issuing the execution or by the person at whose instance the sale is stopped, as the case may be⁵. The sheriff who has done nothing of any benefit in pursuance of the writ is not entitled to recover fees from the execution creditor⁶.

1 As to the meaning of 'high sheriff' see PARA 1101 note 1 ante.

2 As to the right to levy fees see PARAS 1123, 1125 ante.

3 *Stanton v Suliard* (1599) Cro Eliz 654; *Tyson v Paske* (1705) 2 Ld Raym 1212; *Rawstorne v Wilkinson* (1815) 4 M & S 256; *Bunbury v Matthews* (1844) 1 Car & Kir 380; *Maybery v Mansfield* (1846) 9 QB 754; *Marshall v Hicks* (1847) 10 QB 15; *Montague v Davies, Benachi & Co* [1911] 2 KB 595 at 605, 606, DC; *The Ile de Ceylan* [1922] P 256. In an action by a sheriff for poundage (as to which see generally para 1123 ante), proof that he has acted as sheriff is sufficient evidence of his being so without any further proof of his appointment: *Bunbury v Matthews* supra. It may be convenient for a sheriff first to tax his fees (see PARA 1127 post) and then to sue on the taxing master's certificate.

4 For the statutory fees see PARA 1139 et seq post.

5 Order dated 8 July 1920, SR & O 1920/1250, preamble, Schedule Fee 10 (Fee 10 substituted by SI 1971/808).

6 *Bilke v Havelock* (1813) 3 Camp 374; *Lane v Sewell* (1819) 1 Chit 175; *Cole v Terry* (1861) 5 LT 347, where it was held that the sheriff's levy was ineffectual by reason of the claim of an assignee; *Newman v Merriman* (1872) 26 LT 397 (goods of stranger seized). See also *Thomas v Peek* (1888) 20 QBD 727 at 728 per A L Smith J. As to the recovery of fees by a sheriff or a bailiff and the liability of a creditor's solicitor for fees see generally CIVIL PROCEDURE.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/1. THE OFFICE/(3) FEES, POUNDAGE AND ACCOUNTS/1127. Detailed assessment and sheriff's fees.

1127. Detailed assessment and sheriff's fees.

In relation to proceedings begun on or after 26 April 1999¹, where a sheriff and the party liable to pay his fees and charges² differ as to the amount payable, the amount must be assessed by an authorised court officer³ or where a party objects to the detailed assessment of costs being made by an authorised court officer, the court may order it to be made by a costs judge or a district judge⁴.

The jurisdiction of the authorised court officer is confined to fixing the amount the sheriff is entitled to⁵, and no appeal lies from his decision⁶. The costs of detailed assessment are within the discretion of the authorised court officer⁷. The receiving party is entitled to his costs except where it is otherwise provided⁸, or where the court, having regard to all the circumstances⁹ makes some other order¹⁰.

1 I.e. the date on which the CPR come into force. For the position with regard to proceedings commenced before that date see RSC Ord 62.

2 As to the recovery of fees and charges see PARA 1125 ante.

3 See the Order dated 8 July 1920, SR & O 1920/1250, preamble, Schedule Fee 10 (Fee 10 substituted by SI 1971/808). To begin detailed assessment proceedings (formally taxation), the party requiring the detailed assessment must produce a notice of commencement in the relevant practice form and a copy of the bill of costs: see CPR 47.6(1). As to the procedure on detailed assessment generally see CPR Pt 47; and CIVIL PROCEDURE.

4 CPR 47.3(2).

5 Where the difference between the parties depends on a matter of principle it must be settled by action: *Union Bank of Manchester Ltd v Grundy* [1924] 1 KB 833, CA.

6 *Townend v Sheriff of Yorkshire* (1890) 24 QBD 621. However, where the authorised court officer (formerly known as the taxing officer) refuses to consider a particular head of fees the Divisional Court on motion may direct him to subject them to detailed assessment: *Madeley v Greenwood* (1897) 42 Sol Jo 34, DC. See also *Tramp Leasing Ltd v Turnbull* (1991) 135 Sol Jo LB 54, Times, 12 June, CA.

7 *Butler v Smith* (1895) 39 Sol Jo 406.

8 I.e. provided by the provisions of any Act, any of the Civil Procedure Rules or any relevant Practice Direction: see CPR 47.18(1).

9 See CPR 47.18(2).

10 See CPR 47.18(1).

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(1) FUNCTIONS OF SHERIFFS GENERALLY/1128. Decline of sheriff's jurisdiction.

2. POWERS, DUTIES AND LIABILITIES

(1) FUNCTIONS OF SHERIFFS GENERALLY

1128. Decline of sheriff's jurisdiction.

The sheriff's original civil and criminal jurisdictions, which were exercised by him in the sheriff's court¹ and sheriff's tourn² respectively, are now merged in the jurisdictions of the county court, the High Court³ and the Crown Court⁴. Further, the sheriff has ceased to have responsibility in the collection of fines⁵, the summoning of jurors⁶, and for the execution of judgment of death⁷.

The sheriff's functions are now concerned solely with the execution of writs of execution⁸ and warrants⁹, limited functions in connection with parliamentary elections¹⁰ and various ceremonial and administrative duties which often vary according to the traditions of the different counties¹¹.

1 The sheriff was required to hold a court for the due execution of certain writs, for instance writs of elegit (abolished by the Administration of Justice Act 1956 s 34(1) (repealed)), writs of extent (abolished by the Crown Proceedings Act 1947 s 33), and writs of inquiry (abolished in 1957 by RSC Ord 36B r 1 (revoked): see also note 3 *infra*): Sheriffs Act 1887 s 18(1), (2) (repealed by the Administration of Justice Act 1977 s 32(4), Sch 5 Pt V).

2 The sheriff's tourn was abolished by the Sheriffs Act 1887 s 18(4) (repealed).

3 As to the procedure for the assessment of damages in the High Court (which replaced the procedure on a writ of inquiry) see RSC Ord 37 r 1; and CIVIL PROCEDURE. See now Practice Direction--Case Management--Preliminary Stage: Allocation and Re-allocation (1999) PD26 para 12.10.

4 The sheriff's power under any commission or writ to take an inquest by which any person is indicted was abolished by the Sheriffs Act 1887 s 18(3) (repealed).

5 The Criminal Justice Act 1967 s 47 (repealed) provided for the enforcement of fines imposed and recognisances forfeited in criminal proceedings by magistrates' courts instead of sheriffs. As to fines and recognisances see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1673 *et seq*; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 139 *et seq*. See also the Supreme Court Act 1981 s 140; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 201.

6 See the Sheriffs Act 1887 s 12 (repealed); and the Juries Acts 1825-1949 (all repealed), which empowered the sheriff to summon juries. As to the present method of summoning jurors see JURIES vol 61 (2010) PARA 812 *et seq*.

7 See the Sheriffs Act 1887 s 13 (repealed), which charged the sheriff with the execution of a judgment of death. Note that the sentence of death can no longer be imposed.

8 See RSC Ords 45-47; CPR Sch 1 RSC Ords 45-47. See also the Family Proceedings Rules 1991, SI 1991/1247, r 7.3, under which an order of a county court in matrimonial jurisdiction may be transferred to the High Court for enforcement; and PARA 1132 *et seq post*. As the financial limit on the county court jurisdiction increases (cf COURTS), the number of writs of execution issued out of the High Court decreases and the number of county court judgments transferred to the sheriffs increases.

9 See PARA 1137 *post*.

10 See PARA 1129 *post*.

11 Until 1904 the sheriff, by virtue of his office as the keeper of the Queen's peace, both by common law and by commission, was the first man in the county, and superior in rank to any nobleman of the county: *Ex p*

Fernandez (1861) 10 CBNS 3 at 52. However, by Royal Warrant issued on 18 February 1904, prior place is given to the Lord Lieutenant.

The Crown Court may order the sheriff to pay rewards to persons who have been active in or towards the apprehension of any person charged with an arrestable offence: see the Criminal Law Act 1826 s 28 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2057. The sheriff may apply for repayment from the Lord Chancellor on producing the order and receipt: see s 29 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2057. The exercise of this power gives sheriffs the opportunity of holding formal presentation ceremonies. Although it is sufficient for royal proclamations to be published in the Gazettes (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 916), the Lord President of the Council, if he thinks it expedient, may send copies of all royal proclamations to such sheriffs as he thinks fit who are then required to make them known locally: see the Crown Office (Forms and Proclamations Rules) Order 1992, SI 1992/1730 (amended by SI 1996/276) (made under the Crown Office Act 1877 s 3).

UPDATE

1128 Decline of sheriff's jurisdiction

NOTE 3--*Practice Direction--Case Management--Preliminary Stage: Allocation and Re-allocation* PD26 para 12.10 now para 12.6.

NOTE 5--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(1) FUNCTIONS OF SHERIFFS GENERALLY/1129. Functions in connection with parliamentary elections.

1129. Functions in connection with parliamentary elections.

The high sheriff¹ of a county is the returning officer² for parliamentary elections (1) in a county constituency which is coterminous with or wholly contained in the county of which he is sheriff³; (2) in a constituency, wholly outside Greater London, for which he has been designated returning officer by the Secretary of State by order made by statutory instrument⁴.

The high sheriff as returning officer must give to the acting returning officer⁵ written notice of any duties which he reserves to himself; and in the case of any election, only those duties are reserved in relation to which such a notice is given not later than the day following that on which the writ is received⁶.

1 As to the meaning of 'high sheriff' see PARA 1101 note 1 ante.

2 As to returning officers generally see ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 355.

3 Representation of the People Act 1983 s 24(1)(a) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16; and the Local Government Changes for England (Miscellaneous Provision) Regulations 1995, SI 1995/1748, reg 8(3)); and the Representation of the People Act 1983 s 24(1)(aa) (added by the Local Government (Wales) Act 1994 Sch 16).

4 Representation of the People Act 1983 s 24(1)(c) (amended by the Local Government (Wales) Act 1994 Sch 16); and the Representation of the People Act 1983 s 24(1)(cc) (added by the Local Government (Wales) Act 1994 Sch 16). For a list of the constituencies of which the high sheriff is the returning officer see the Returning Officers (Parliamentary Constituencies) (England) Order 1995, SI 1995/2061 (as amended); the Returning Officers (Parliamentary Constituencies) (Wales) Order 1996, SI 1996/897; and ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 355.

5 As to the office of acting returning officer see ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 355 et seq.

6 See the Representation of the People Act 1983 s 28(1), (3) (s 28(1) as amended); and ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 356. In the event of the death of a high sheriff the acting returning officer and not the under-sheriff discharges all the duties as returning officer until another high sheriff is appointed and has made his declaration of office: see s 28(6); and ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 355. As to the office of under-sheriff see PARAS 1111-1116 ante.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(1) FUNCTIONS OF SHERIFFS GENERALLY/1130. Sheriffs' functions as conservators of the peace.

1130. Sheriffs' functions as conservators of the peace.

As conservator of the Queen's peace it was the sheriff's duty to suppress unlawful assemblies and riots, to apprehend offenders and to defend his county against invasion¹. Although these ancient powers and rights have been preserved², in modern times all duties for the enforcement of law and order are the responsibility of the police forces³. However, the sheriff is entitled to arrest and commit to prison any person who resists the execution of a writ, and for that purpose may call upon the police for assistance⁴.

1 1 Bl Com (14 Edn) 343; Com Dig Viscount (C2); 17 Ric 2 c 8 (Suppression of Riots) (1393); the Riot Act 1411 (repealed); and the Riot Act 1414 (repealed). By the Sheriffs Act 1887 s 8(1) (repealed), every person in a county was bound to be ready at the sheriff's command and at the cry of the county to arrest a felon and in default was liable to a fine. As to the duty of private persons to assist constables see POLICE vol 36(1) (2007 Reissue) PARA 480. As to the duty of private persons to assist magistrates see *R v Pinney* (1832) 5 C & P 254. In 1939 the Privy Council warned the sheriffs that in the event of invasion they might have to exercise their powers to call upon the civilian population to assist them in the defence of their counties.

2 The Sheriffs Act 1887 s 39(1)(d) expressly preserves such of the powers, rights, privileges, obligations, liabilities and duties of any sheriff or sheriff's officer as existed at common law. In *R v Lydford* [1914] 2 KB 378, CCA, it was held that if the court has power to make an order, there must be someone whose duty it is to carry it out and that therefore the duty of carrying out a sentence of whipping fell on the sheriff as the person entrusted, at common law, with the duty of carrying out the court's order.

3 As to the functions and powers of the police in relation to the preservation of the Queen's peace see POLICE vol 36(1) (2007 Reissue) PARA 477 et seq.

4 See the Sheriffs Act 1887 s 8(2), under which any person who resists the execution is guilty of an offence. By letter of 15 September 1969 it was acknowledged that the Metropolitan Police Commissioner would give assistance to the sheriff of Greater London in executing writs of possession where premises were occupied by squatters. See also PARA 1131 post.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(1) FUNCTIONS OF SHERIFFS GENERALLY/1131. Obstruction of court officers in execution of process for possession.

1131. Obstruction of court officers in execution of process for possession.

A person who resists or intentionally obstructs any person who is in fact an officer of a court¹ engaged in executing any process issued by the High Court or any county court for the purpose of enforcing any judgment or order for the recovery or delivery of possession of any premises is guilty of an offence². However, this provision does not apply unless the judgment or order in question was given or made in proceedings brought under any provisions of rules of court applicable only in circumstances where the person claiming possession of any premises alleges that the premises in question are occupied solely by a person or persons, not being a tenant or tenants holding over after the termination of the tenancy, who entered into or remained in occupation of the premises without the licence or consent of the person claiming possession or any predecessor in title of his³.

In any proceedings for an offence under these provisions it is a defence for the accused to prove that he believed that the person he was resisting or obstructing was not an officer of the court⁴.

A constable in uniform or any officer of a court may arrest without warrant anyone who is or whom he, with reasonable cause, suspects to be, guilty of an offence under these provisions⁵.

1 'Officer of the court' means any sheriff, under-sheriff, deputy sheriff, bailiff or sheriff's officer (Criminal Law Act 1977 s 10(6)(a)), and any bailiff or other person who is an officer of a county court within the meaning of the County Courts Act 1984 (see s 147(1); and COURTS) (Criminal Law Act 1977 s 10(6)(b); Interpretation Act 1978 s 17(2)(a)).

2 Criminal Law Act 1977 s 10(1). This provision is without prejudice to the Sheriffs Act 1887 s 8(2) (see PARA 1130 ante); Criminal Law Act 1977 s 10(1). 'Premises' means any building, any part of a building under separate occupation, any land ancillary to a building, the site comprising any building or buildings together with any ancillary land, and any other place (s 12(1)(a)); and 'building' includes any structure other than a movable one, and any movable structure, vehicle or vessel designed or adapted for use for residential purposes (s 12(2)). For the purposes of s 12(1), part of a building is under separate occupation if anyone is in occupation or is entitled to occupation of that part as distinct from the whole (s 12(2)(a)), and land is ancillary to a building if it is adjacent to it and used or intended for use in connection with the occupation of that building or any part of it (s 12(2)(b)).

3 Ibid s 10(1), (2). For the rules of court applicable see RSC Ord 113; CPR Sch 1 RSC Ord 113; and REAL PROPERTY vol 39(2) (Reissue) PARA 270; and CCR Ord 24; CPR Sch 2 CCR Ord 24; and CIVIL PROCEDURE.

4 Criminal Law Act 1977 s 10(3). A person guilty of an offence under s 10 is liable on summary conviction to imprisonment for a term not exceeding six months, or to a maximum fine of level 5 on the standard scale or both: s 10(4) (amended by the Criminal Justice Act 1982 ss 38, 46). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37(2) (as substituted): Interpretation Act 1978 s 5, Sch 1 (amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58(a). See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2, 500; level 5, £5000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 1991 s 18 (substituted by the Criminal Justice Act 1993 s 65).

5 Criminal Law Act 1977 s 10(5). The power of arrest without a warrant is specifically preserved by the Police and Criminal Evidence Act 1984 s 26(2), Sch 2. As to the constable's power of entry for the purpose of arrest see the Police and Criminal Evidence Act 1984 s 17 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 884.

UPDATE

1131 Obstruction of court officers in execution of process for possession

TEXT AND NOTES--Criminal Law Act 1977 s 10 amended: Courts Act 2003 Sch 8 para 189.

NOTE 5--1991 Act s 18, consolidated in the Powers of Criminal Courts (Sentencing) Act 2000 s 128, repealed: Criminal Justice Act 2003 Sch 37 Pt 7. See now s 162.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(2) EXECUTION OF PROCESS/(i) Receipt and Execution of Writs/1132. Writs of execution.

(2) EXECUTION OF PROCESS

(i) Receipt and Execution of Writs

1132. Writs of execution.

Subject to certain exceptions¹, all writs of execution on judgments and orders of the Supreme Court² are directed to the high sheriff³, who is under a duty to execute them⁴. In exercising his functions in executing writs the sheriff acts as an officer of the court⁵.

¹ The exceptions are writs of sequestration and writs of fieri facias de bonis ecclesiasticis: see CIVIL PROCEDURE.

² The Supreme Court consists of the Court of Appeal, the High Court of Justice and the Crown Court: Supreme Court Act 1981 s 1(1).

³ As to the issue and form of writs of execution and the manner in which they are executed see CIVIL PROCEDURE. As to the meaning of 'high sheriff' see PARA 1101 note 1 ante.

⁴ As to the execution of writs by sheriffs' officers see PARA 1119 ante. Although it is primarily the sheriff's duty to know the extent of his bailiwick (as to which see PARA 1111 ante), the execution creditor must define reasonably exactly the property on which he requires the sheriff to levy, and should correctly state the address of the execution debtor in the county. If, on receipt of the writ of fieri facias in the under-sheriff's office, the address is seen to be in another county the writ should be returned unexecuted without fee, but, if there is doubt as to the situation of the premises, the sheriff's officer must make inquiries on the spot and is entitled to his fee for so doing: see the propositions agreed with the Under Sheriffs Association, set out in (1953) 50 Law Society's Gazette 122. As to execution of process in the county court see COURTS; as to execution against a tenant see DISTRESS vol 13 (2007 Reissue) PARA 1032; and as to the duty of the sheriff in case of supervening bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 679-680; COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARAS 2643-2645.

⁵ Although for some purposes the sheriff is the agent of the party who puts the writ into his hands, he is not a mere agent but is a public functionary with duties towards those to whom the writ in his hands is directed: *Hooper v Lane* (1857) 6 HL Cas 443 at 549 per Lord Cranworth. See also *Re a Debtor (No 2 of 1977), ex p the Debtor v Goacher* [1979] 1 All ER 870, [1979] 1 WLR 956, DC, where it was held that the sheriff is not simply an agent of the judgment creditor but has wider responsibilities which include duties towards the Official Receiver or the trustee in bankruptcy. In *Fredericks and Pelhams Timber Buildings v Wilkins (Read, claimant)* [1971] 3 All ER 545, [1971] 1 WLR 1197, CA, it was held that the sheriff is the officer charged with the carrying out of the orders of the court and as such is in the same position as an officer of the court and should maintain a neutral position in interpleader proceedings.

UPDATE

1132 Writs of execution

TEXT AND NOTES--Any rule of law requiring a writ of execution issued from the High Court to be directed to a sheriff is abolished: Courts Act 2003 s 99(2). For provision relating to High Court writs of execution see s 99(1), Sch 7 (amended by the Constitutional Reform Act 2005 Sch 4 para 351; and the Tribunals, Courts and Enforcement Act 2007 s 140). See further High Court Enforcement Officers Regulations 2004, SI 2004/400 (amended by SI 2004/673). See also Constitutional Reform Act 2005 s 19, Sch 7 para 4.

TEXT AND NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981 and for 'Supreme Court' substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 paras 1, 26 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(2) EXECUTION OF PROCESS/(i) Receipt and Execution of Writs/1133. Sheriff's liability in executing writs.

1133. Sheriff's liability in executing writs.

The writ of execution is an absolute justification to the sheriff for what is done in pursuance of it¹, even though the judgment on which it is founded may be afterwards set aside², and the fact that advice is given to the sheriff's officers³ by the solicitors for the execution creditor does not of itself make the officers agents of the execution creditor⁴. However, the sheriff is liable if any act is done in excess of the authority given by the writ⁵, and in an action against him for trespass it is not necessary to prove actual damage⁶. The sheriff may also be sued by the execution creditor for not duly enforcing the writ, and by either the creditor or the debtor for any unreasonable delay or negligence in the execution, provided actual damage is shown⁷.

A sheriff is entitled to the benefit of the interpleader process⁸.

1 *Hunt v Hooper* (1844) 12 M & W 664; and cf *Withers v Parker* (1860) 5 H & N 725, Ex Ch. As to wrongful and irregular execution see CIVIL PROCEDURE.

2 *Countess of Rutland's Case* (1605) 5 Co Rep 25b; *Parsons v Loyd* (1772) 3 Wils 341; *Ives v Lucas* (1823) 1 C & P 7; *Williams v Williams and Nathan* [1937] 2 All ER 559, CA; *Barclays Bank Ltd v Roberts* [1954] 3 All ER 107, [1954] 1 WLR 1212, CA. A sheriff selling, under an execution, goods in the possession of the execution debtor at the time of the seizure, without any claim being made to them, is protected from liability in regard to the sale unless he had notice or, by making reasonable inquiry, might have ascertained that the goods were not the debtor's: see the Supreme Court Act 1981 s 138B (as added). See also *Curtis v Maloney* [1951] 1 KB 736 at 745, [1950] 2 All ER 982 at 986, CA. A similar provision applies to the registrar of a county court selling under an execution: see the County Courts Act 1984 s 98 (as amended); and COURTS.

3 As to the execution of writs by sheriffs' officers see PARA 1119 ante.

4 *Barclays Bank Ltd v Roberts* [1954] 3 All ER 107, [1954] 1 WLR 1212, CA, where it was held that a sheriff's officer who executed a writ of possession against a sub-tenant on the advice of the landlord's solicitors had acted in accordance with the writ and that therefore, as the solicitors were not the landlord's agents, the landlord was not liable for wrongful ejectment.

5 *Saunderson v Baker and Martin* (1772) 3 Wils 309 (trespass for seizing goods of the wrong person); *Ash v Dawnay* (1852) 8 Exch 237 (trespass for remaining in possession an unreasonable time); *Playfair v Musgrove* (1845) 14 M & W 239 (remaining on premises after property sold); *Lee v Dangar, Grant & Co* [1892] 2 QB 337, CA (refusing to withdraw until fees improperly demanded paid). Trespass will lie if premises are wrongfully entered and a substantial grievance is suffered: *De Coppett v Barnett* (1901) 17 TLR 273, CA. See also *Watson v Murray & Co* [1955] 2 QB 1, [1955] 1 All ER 350. An officer of a county court is not liable as a trespasser by reason of a mere irregularity or informality in the execution of a warrant although the person aggrieved may bring an action against him for special damage suffered: see the County Courts Act 1984 s 126 (as amended); and COURTS. As to trespass generally see TORT. There was an action for trover if more goods than sufficient to satisfy the levy were sold (*Batchelor v Vyse* (1834) 4 Moo & S 552; *Stead v Gascoigne* (1818) 8 Taunt 527; *Aldred v Constable* (1844) 6 QB 370), and if the sheriff seized and sold the goods of a third person (*Jelks v Hayward* [1905] 2 KB 460). As to actions for trover (also called conversion of goods and which is now actionable as wrongful interference with goods) see the Torts (Interference with Goods) Act 1977 s 1(a); CIVIL PROCEDURE; and TORT. As to the liability of the execution creditor for wrongful seizure and the sheriff's right to indemnity against him when misled by the indorsement on the writ see CIVIL PROCEDURE. As to the liability of the sheriff for the wrongful acts of his officers see PARA 1146 et seq post.

6 *Saunderson v Baker and Martin* (1772) 3 Wils 309; *Lee v Dangar, Grant & Co* [1892] 2 QB 337, CA.

7 *Mullet v Challis* (1851) 16 QB 239 (sale at an undervalue in consequence of negligence); *Aireton v Davis* (1833) 9 Bing 740; *Clifton v Hooper* (1844) 6 QB 468; *Carlile v Parkins* (1822) 3 Stark 163 (unreasonable delay). As to the measure of damages generally see DAMAGES.

8 See CIVIL PROCEDURE. The court has to look at all the relevant facts surrounding the execution, including the conduct of the claimant; it is the quality of the sheriff's admitted wrong which is relevant: *Neumann v Bakeaway Ltd* [1983] 2 All ER 935, [1983] 1 WLR 1016n, CA.

UPDATE

1133 Sheriff's liability in executing writs

NOTE 2--Supreme Court Act 1981 (now Senior Courts Act 1981) s 138B repealed: Courts Act 2003 Sch 8 para 264.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(2) EXECUTION OF PROCESS/(i) Receipt and Execution of Writs/1134. Right of entry in civil process.

1134. Right of entry in civil process.

In the execution of process, the overriding rule is that the sheriff may not gain entry into the debtor's dwelling house or the premises of any stranger to which the debtor's goods have been removed by breaking down the outer door or using force, although he may enter by any of the usual means¹. However, the sheriff will be a trespasser if he enters a stranger's premises and the goods are not there². Once an entry has been effected, the sheriff may break open inner doors and cupboards but he must not remain on the premises for an unreasonable length of time³. A sheriff executing a writ of fieri facias is not entitled to re-enter a dwelling house by force except where, having gained entry peaceably, he is expelled by force or has been deliberately excluded by the tenant. What would amount to deliberate exclusion is to be considered in the light of the individual circumstances⁴.

1 As to seizure and right of entry see CIVIL PROCEDURE.

2 See CIVIL PROCEDURE.

3 As to rights after entry see CIVIL PROCEDURE. See also PARA 1141 post.

4 *Khazanchi v Faircharm Investments Ltd; McLeod v Butterwick* [1998] 2 All ER 901, [1998] 1 WLR 1603, CA.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(2) EXECUTION OF PROCESS/(i) Receipt and Execution of Writs/1135. Property in goods seized.

1135. Property in goods seized.

After goods have been seized by the sheriff¹ the goods are placed in the custody of the law and are held on behalf of the legal owners². The general property in the goods until sale remains in the execution debtor, if they belong to him³, but the sheriff has a special property in them and may maintain trespass or conversion against a person taking them out of his custody⁴. No property passes to the execution creditor by virtue of the seizure⁵.

1 As to the seizure of goods see CIVIL PROCEDURE. As to excessive seizure of goods see also *Watson v Murray & Co* [1955] 2 QB 1, [1955] 1 All ER 350, where damages were awarded against the sheriff's officers for trespass in taking exclusive possession of premises for the purpose of holding a sale there even though no damage had resulted from excessive execution.

2 *Richards v Jenkins* (1887) 18 QBD 451 at 455, CA, per Lord Esher MR. As to the right of the sheriff to interplead where the goods are claimed by a third person see CIVIL PROCEDURE.

3 *Giles v Grover* (1832) 9 Bing 128, HL; *Playfair v Musgrove* (1845) 14 M & W 239; *Re Clarke* [1898] 1 Ch 336, CA.

4 *Wilbraham v Snow* (1670) 2 Wms Saund 47; *Giles v Grover* (1832) 9 Bing 128, HL. See also CIVIL PROCEDURE.

5 *Giles v Grover* (1832) 9 Bing 128, HL.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(2) EXECUTION OF PROCESS/(i) Receipt and Execution of Writs/1136. Return to the writ.

1136. Return to the writ.

Any party at whose instance a writ of execution has been issued or the person against whom the writ was issued may serve a notice on the sheriff to whom it was directed requiring him to indorse on the writ, within a specified time, a statement of the manner in which it has been executed and to send a copy of the statement to that party¹.

¹ CPR Sch 1 RSC Ord 46 r 9(1). The return is in effect the sheriff's report as to the result of the execution and may be necessary where an official record is required. If the sheriff fails to comply with the notice the court may order the sheriff to supply the statement: see CPR Sch 1 RSC Ord 46 r 9(2). See further CIVIL PROCEDURE. As to the position in relation to proceedings commenced before 26 April 1999 see RSC Ord 46 r 9.

UPDATE

1136 Return to the writ

TEXT AND NOTE 1--Reference is now to sheriff to whom it was directed or relevant enforcement officer: CPR Sch 1 RSC Ord 46 r 9(1) (amended by SI 2003/3361).

NOTE 1--References are now to sheriff or enforcement officer: CPR Sch 1 RSC Ord 46 r 9(2).

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(2) EXECUTION OF PROCESS/(i) Receipt and Execution of Writs/1137. Warrant for possession of land after compulsory acquisition.

1137. Warrant for possession of land after compulsory acquisition.

Where undertakers or an acquiring authority are authorised to enter upon and take possession of land required for the purposes of the undertaking and the owner or occupier of the land or any other person refuses to give up possession, or hinders the taking of possession, the undertakers or the authority may issue their warrant to the sheriff to deliver possession¹.

¹ See the Lands Clauses Consolidation Act 1845 s 91; the Compulsory Purchase Act 1965 s 13(1); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 646. This power is often used by acquiring authorities. The sheriff executes the warrant in the same way as any other writ of possession. As to the costs of a warrant of possession issued and executed under this provision see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 647.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(2) EXECUTION OF PROCESS/(ii) Fees for Execution of Process/1138. Types of fees.

(ii) Fees for Execution of Process

1138. Types of fees.

The fees to which a sheriff is entitled in connection with the execution of process¹ fall into the following categories: (1) an allowance for particular action taken²; or (2) a sum in respect of actual expenses incurred³; or (3) a percentage based on the amount of money received or recovered⁴; or (4) the value of the goods seized and sold⁵.

1 As to the statutory right to fees see PARA 1123 ante.

2 Eg fees allowed in respect of mileage: see PARA 1139 post.

3 Eg incidental expenses: see PARA 1142 post.

4 Eg a percentage of money received on a sale by auction: see PARA 1143 post. See also PARA 1144 post.

5 Eg poundage: see PARA 1144 post.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(2) EXECUTION OF PROCESS/(ii) Fees for Execution of Process/1139. Mileage.

1139. Mileage.

A sheriff's officer¹ concerned in the execution of a writ of fieri facias may demand, take and receive a fixed sum per mile in respect of journeys from his residence to the place of levy and return². One journey may be made to seize the goods and, where appropriate, one journey to remove them³. In the case of a writ of possession or delivery, mileage is allowed for one journey from the residence of the sheriff's officer to the place where the land or goods are situated and return⁴.

1 As to sheriffs' officers see PARA 1119 ante.

2 Order dated 8 July 1920, SR & O 1920/1250, preamble, Schedule Fee 1 (amended by SI 1971/808; and SI 1988/1384). The rate is 29.2p per mile: Order dated 8 July 1920, SR & O 1920/1250, Schedule Fee 1 (amended by SI 1988/1384). Where the place of levy is more than 1½ miles from the nearest railway station, out-of-pocket expenses actually and reasonably incurred for conveyance from the station to the place of levy and back may be allowed in lieu of mileage: Order dated 8 July 1920, SR & O 1920/1250, Schedule Fee 1 (amended by SI 1971/808). In *Townend v Sheriff of Yorkshire* (1890) 24 QBD 621, a sheriff who executed a writ of fieri facias by seizing goods at different, separately rated, addresses of the debtor was allowed mileage for each seizure.

3 Order dated 8 July 1920, SR & O 1920/1250, Schedule Fee 1 (as amended: see note 2 supra).

4 Order dated 2 May 1921, SR & O 1921/827, preamble, Schedule Fee 7A (added by SI 1971/808; and amended by SI 1988/1384). The rate is 29.2p per mile: Order dated 2 May 1921, SR & O 1921/827, Schedule Fee 7A (as so added and amended).

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(2) EXECUTION OF PROCESS/(ii) Fees for Execution of Process/1140. Seizure and work done.

1140. Seizure and work done.

In executing a writ of fieri facias a sheriff's officer is entitled to a fee for seizure¹ for each building or place separately rated at which a seizure is made².

Where written claims are received by the sheriff's officer from third persons, such as from a landlord for unpaid rent or from persons claiming ownership of goods seized, a charge is allowed for making inquiries as to such claims, including giving the necessary notices to all parties, and towards out-of-pocket expenses³.

¹ As to seizure see CIVIL PROCEDURE.

² Order dated 8 July 1920, SR & O 1920/1250, preamble, Schedule Fee 2 (amended by SI 1971/808). The fee is £2 for each building: Order dated 8 July 1920, SR & O 1920/1250, Schedule Fee 2 (as so amended). See also *Re Wells, ex p Sheriff of Kent* (1893) 68 LT 231, where it was held that fees for seizure or mileage (see PARA 1139 ante) are not payable on a second writ where the sheriff is in possession under the first unless the seizure under the second is made in a different place.

³ Order dated 8 July 1920, SR & O 1920/1250, Schedule Fee 3 (amended by SI 1956/502; and SI 1971/808). A fee not exceeding £2 is allowed for work done and a further fee, again not exceeding £2, for all out-of-pocket expenses actually and reasonably incurred in relation to such work: Order dated 8 July 1920 SR & O 1920/1250, Schedule Fee 3 (amended by SI 1971/808). If necessary, details of the work must be given by the sheriff.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(2) EXECUTION OF PROCESS/(ii) Fees for Execution of Process/1141. Possession of goods and animals.

1141. Possession of goods and animals.

A sheriff concerned in the execution of a writ of fieri facias is entitled to a fee for keeping possession of the debtor's goods or animals¹. Where a man is left in physical possession a daily fee is allowed per man, but he must provide his own board and accommodation². However, a fee for physical possession must not be charged where an agreement for walking possession³ is signed at the time of the levy⁴, although a lesser fee for walking possession is allowed⁵.

The sheriff is only allowed to charge for possession money for a reasonable period while he prepares for sale unless the debtor consents to the period being extended⁶. However, if the sheriff remains in possession of the debtor's goods without selling at the request of the execution creditor and of the debtor he will be entitled to his fees for the period⁷.

Where the sheriff is in possession against the same debtor under more than one writ, possession money can only be charged in respect of the writ that has priority⁸.

1 Order dated 8 July 1920, SR & O 1920/1250, preamble, Schedule Fee 4 (Fee 4 substituted by SI 1956/502; and further amended by the Decimal Currency Act 1969 s 10(1); and by SI 1971/808). As to possession money generally see further CIVIL PROCEDURE.

2 Order dated 8 July 1920, SR & O 1920/1250, Schedule Fee 4(a) (as substituted and amended: see note 1 supra). The fee is £3 per man per day: Schedule Fee 4(a) (as so substituted and amended).

3 The concept of walking possession, where the bailiff makes regular visits to the debtor's premises after the initial seizure, has been adapted from the county court. See also the County Courts Act 1984 s 89 (as amended); CIVIL PROCEDURE; DISTRESS vol 13 (2007 Reissue) PARA 942.

4 Order dated 8 July 1920, SR & O 1920/1250, Schedule Fee 4 (as substituted and amended: see note 1 supra). For the form of a walking possession agreement see the Sheriffs' Fees (Amendment) Order 1956, SI 1956/502, art 1, Schedule. The agreement may be signed either by the defendant or by a person in possession or control of the goods: see *National Commercial Bank of Scotland v Arcam Demolition and Construction Ltd and Hatherley Hall Ltd* [1966] 2 QB 593, [1966] 3 All ER 113, CA.

5 Order dated 8 July 1920, SR & O 1920/1250, Schedule Fee 4(b) (as substituted and amended: see note 1 supra). The daily fee for walking possession under an agreement is 25p: Schedule Fee 4(b) (as so substituted and amended).

6 *Re Finch, ex p Sheriff of Essex* (1891) 65 LT 466.

7 *Re Hurley* (1893) 41 WR 653, where the sheriff was allowed possession money from the date of seizure until the date of the receiving order: *Re Beeston, ex p Board of Trade* [1899] 1 QB 626, CA, where the sheriff was allowed possession money for 15 months, being the period he was in possession at the request of the execution creditor and debtor.

8 *Glasbrook v David and Vaux* [1905] 1 KB 615. However, where the sheriff appropriates different goods to answer each execution he may charge possession money on each: *Re Morgan, ex p Board of Trade* [1904] 1 KB 68.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(2) EXECUTION OF PROCESS/(ii) Fees for Execution of Process/1142. Incidental expenses and charges.

1142. Incidental expenses and charges.

A sheriff concerned in the execution of a writ of fieri facias may charge for the sums actually and reasonably paid (1) for the removal of goods or animals to a place of safe keeping¹; (2) for their warehousing or for taking charge of them when they have been removed²; and (3) for the keep of animals while in the sheriff's custody³. However, no fees for the keeping of goods or animals may be charged after the goods or animals have been removed⁴.

Where there is no prescribed fee to cover the cost or expenses of any duty which the sheriff may have to undertake, the fee is such sum as may be allowed on a special application to a Supreme Court Master or a District Judge⁵.

The amount of any fees and charges payable are to be assessed in case the sheriff and the party liable to pay such fees differ as to the amount⁶.

1 See Order dated 8 July 1920, SR & O 1920/1250, preamble, Schedule Fee 5.

2 See *ibid* Schedule Fee 6.

3 See *ibid* Schedule Fee 7.

4 See *ibid* Schedule Fees 5-7.

5 See Order dated 2 May 1921, SR & O 1921/827, preamble, Schedule Fee 9.

6 See *ibid* Schedule Pt I (amended by SI 1992/1379). As to detailed assessment see PARA 1127 ante.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(2) EXECUTION OF PROCESS/(ii) Fees for Execution of Process/1143. Sales by auction and private sales.

1143. Sales by auction and private sales.

Where goods seized under a writ of fieri facias are sold¹ by public auction² at the auctioneer's premises, the auctioneer is entitled to an inclusive charge for all out-of-pocket expenses except the costs of removal³. Where the auction is held on the debtor's premises the auctioneer is entitled, in addition to out-of-pocket expenses actually and reasonably incurred, to a commission on the sum realised⁴. Where the court orders that the goods may be sold otherwise than by public auction⁵ the auctioneer is entitled to half the percentage allowed on a sale by auction⁶, plus a commission in respect of work actually done in preparing for sale by auction⁷ and the sums actually and reasonably paid for advertising any intended sale by auction and for necessary labour⁸.

Where no sale takes place, either by public auction or as ordered by the court, the auctioneer is entitled to a commission on the value of the goods⁹.

1 As to the sale of goods generally see CIVIL PROCEDURE.

2 Where goods are sold under an execution for a sum exceeding £20, the sale must be by public auction unless the court from which the process issued orders otherwise: see the Supreme Court Act 1981 s 138A(1) (as added); and CIVIL PROCEDURE.

3 Order dated 8 July 1920, SR & O 1920/1250, preamble, Schedule Fee 8(1)(a) (Fee 8 substituted by SI 1962/2417). The rates are £15 per cent on the first £100; £12.50 per cent on the next £900; and £10 per cent above £1,000: Order dated 8 July 1920, SR & O 1920/1250, Schedule Fee 8(1)(a) (as so substituted; and further amended by the Decimal Currency Act 1969 s 10(1)).

4 Order dated 8 July 1920, SR & O 1920/1250, Schedule Fee 8(1)(b) (as substituted: see note 3 supra). The rate of commission is 7½%: Schedule Fee 8(1)(b) (as so substituted).

5 Ie on an application under RSC Ord 47 r 6, or CPR Sch 1 RSC Ord 47 r 6: see CIVIL PROCEDURE.

6 Order dated 8 July 1920, SR & O 1920/1250, Schedule Fee 9(a).

7 Ie in preparing inventory and valuation and all other preparatory work: ibid Schedule Fee 9(b). The rate of commission is 2½% on the value of the goods: Schedule Fee 9(b).

8 See ibid Schedule Fee 9(c).

9 Where the goods have been removed to the auctioneer's premises the rate of commission is 10% to include all out-of-pocket expenses except the costs of removal: Order dated 8 July 1920, SR & O 1920/1250, Schedule Fee 8(2)(a) (as substituted: see note 3 supra). Where the goods have not been removed but work has been done by the auctioneer or sheriff's officer in preparation for sale, the rate is 5%, in addition to out-of-pocket expenses actually and reasonably incurred: Schedule Fee 8(2)(b) (as so substituted; and Fee 8(2)(b) further substituted by SI 1971/808). This fee may be charged only where the work done includes the preparation of a detailed inventory of the goods seized: Order dated 8 July 1920, SR & O 1920/1250, Schedule Fee 8(2) (as so amended).

UPDATE

1143 Sales by auction and private sales

NOTE 2--Supreme Court Act 1981 (now Senior Courts Act 1981) s 138A repealed: Courts Act 2003 Sch 8 para 264.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(2) EXECUTION OF PROCESS/(ii) Fees for Execution of Process/1144. Poundage.

1144. Poundage.

In the case of an execution under a writ of fieri facias the sheriff is entitled to poundage¹ on the amount recovered² at the rate of 5 per cent up to £100 and 2.5 per cent above that sum³. The basis for calculating poundage on a writ of possession was changed in 1992⁴. Following the abolition of domestic rating by the Local Government Finance Act 1988⁵, where the value for a domestic property⁶ (either as a whole or part) is ascertainable from the valuation list in force immediately before 1 April 1990, that value forms the basis for calculating the sheriff's fee in respect of the property or the relevant part of it⁷. Otherwise, the fee is calculated by reference to the value by the year of the property or the relevant part of it⁸. The fee charged in relation to non-domestic property was reduced to reflect the revaluation of non-domestic property under the Local Government Finance Act 1988 and the fee is calculated by reference to the annual value for rating of the property⁹. In executing a writ of delivery a sheriff is entitled to charge poundage at the rate of 4 per cent on the value of the goods as stated in the writ of summons or judgment¹⁰.

The sheriff is also entitled to poundage where, after seizure, a payment is made by the debtor or a third person under the compulsion of the writ and the plaintiff agrees to withdraw the sheriff from possession in consequence of the compromise between the parties¹¹.

1 As to the sheriff's statutory right to poundage see PARA 1123 ante.

2 To be entitled to poundage the sheriff must levy the money: *Colls v Coates* (1840) 11 Ad & El 826. See also CIVIL PROCEDURE.

3 Order dated 8 July 1920, SR & O 1920/1250, preamble, Schedule Fee 10 (Fee 10 substituted by SI 1971/808).

4 See Order dated 2 May 1921, SR & O 1921/827, preamble, Schedule Fee 7B (Fee 7B added by SI 1971/808; and later substituted by SI 1992/1379).

5 As to the abolition of domestic rating see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 227.

6 I.e. domestic property within the meaning of the Local Government Finance Act 1988 s 66 (as amended): see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 120.

7 See Order dated 2 May 1921, SR & O 1921/827, Schedule Fee 7B(1) (as added and substituted: see note 4 supra).

8 See *ibid* Schedule Fee 7B(3) (as added and substituted: see note 4 supra).

9 See *ibid* Schedule Fee 7B(2), (4) (as added and substituted: see note 4 supra). As to the valuation of non-domestic property for rating see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 86 et seq.

10 *Ibid* Schedule Fee 7C (added by SI 1971/808).

11 See *Madeley v Greenwood* (1897) 42 Sol Jo 34, DC; *Re Thomas, ex p Sheriff of Middlesex* [1899] 1 QB 460 at 462, CA, per Lindley MR; *Montague v Davies, Benachi & Co* [1911] 2 KB 595, DC.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(2) EXECUTION OF PROCESS/(ii) Fees for Execution of Process/1145. Value added tax on sheriff's fees.

1145. Value added tax on sheriff's fees.

Where value added tax is chargeable in respect of the provision by a sheriff of any service¹ for which a fee is prescribed² the amount of tax must be paid in addition to that fee³. Accordingly, any person delivering a writ of execution to a sheriff to be executed by him, or serving a request⁴ for the writ to be indorsed with the manner in which it has been executed, must pay the value added tax at the appropriate rate, in addition to the prescribed sheriff's fee, at the time of delivery or service⁵.

1 Where a person, in the course or furtherance of a trade, profession or vocation, accepts any office, services supplied by him as holder of that office are treated as supplied in the course or furtherance of the trade, profession or vocation: Value Added Tax Act 1994 s 94(4); and see VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 25. The effect of this provision is that the supply of sheriffs' services, not being an exempt supply are chargeable to value added tax.

2 Ie under the Order dated 8 July 1920, SR & O 1920/1250 (as amended); or the Order dated 2 May 1921, SR & O 1921/827 (as amended): see PARAS 1123, 1139 et seq ante.

3 Sheriffs' Fees (Amendment No 2) Order 1977, SI 1977/2111, art 2.

4 Ie under RSC Ord 46 r 9, or CPR Sch 1 RSC Ord 46 r 9: see PARA 1136 ante

5 *Practice Direction* [1978] 1 WLR 144.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(3) LIABILITY OF SHERIFF FOR ACTS OF OFFICERS/1146. Principles of liability.

(3) LIABILITY OF SHERIFF FOR ACTS OF OFFICERS

1146. Principles of liability.

A sheriff is liable for any fraud or wrongful act or omission on the part of his under-sheriff, bailiff or officer in the course of their employment¹, even though there may be no proof of any recognition by the sheriff of the act or default complained of². However, a sheriff is not liable for the acts of a bailiff or officer which are quite outside the scope of his duties and which are not done for the purpose of executing the authority entrusted to him, or under colour of such authority³, or for money received by the bailiff or officer otherwise than in the course of exercising or purporting to exercise his authority⁴.

A sheriff is not liable at the suit of an execution creditor or debtor for an act of misconduct on the part of his officer which was done at the request or with the knowledge and assent of the person complaining⁵. However, the mere fact that the debtor or creditor induces the officer to commit a breach of his duty does not absolve the sheriff from his general responsibility for the misconduct of the officer, but only exonerates him from liability for the particular act or omission assented to by the plaintiff⁶.

¹ *Laicock's Case* (1627) Lat 187; *Woodgate v Knatchbull* (1787) 2 Term Rep 148; *Raphael v Goodman* (1838) 8 Ad & El 565; *Brown v Copley* (1844) 8 Scott NR 350, where it was held that a sheriff is not liable for the acts of his officers done after he has countermanded the execution of the writ; *Wright v Child* (1866) LR 1 Exch 358. 'The reason that the sheriff is held liable, is, that, having a duty imposed upon him by law, instead of performing it himself, he delegates it to another; and therefore it is but just that he should be responsible for the misconduct of those to whom he so delegates the performance of his duty': *Smith v Pritchard* (1849) 8 CB 565 at 588 per Maule J. The sheriff is liable in trespass if, on the execution of a writ of fieri facias, his bailiff takes the goods of a person other than the execution debtor (*Saunderson v Baker and Martin* (1772) 3 Wils 309; *Ackworth v Kempe* (1778) 1 Doug KB 40; *Smith v Milles* (1786) 1 Term Rep 475 at 480), or wrongfully seizes goods after payment (*Gregory v Cotterell* (1855) 5 E & B 571, Ex Ch), or wrongfully breaks and enters the premises of a third person (*Smith v Pritchard* supra), or for false imprisonment by his officers (*Saunderson v Baker and Martin* supra at 317). See also *Moore v Lambeth County Court Registrar (No 2)* [1970] 1 QB 560, [1970] 1 All ER 980, CA; and *Khazanchi v Faircharm Investments Ltd; McLeod v Butterwick* [1998] 2 All ER 901, [1998] 1 WLR 1603, CA, where many of the earlier cases were reviewed. As to wrongful and irregular execution generally see CIVIL PROCEDURE. The sheriff's officers are themselves liable in damages for their wrongful acts: *Watson v Murray & Co* [1955] 2 QB 1, [1955] 1 All ER 350 (trespass).

² *Saunderson v Baker and Martin* (1772) 3 Wils 309; *Ackworth v Kempe* (1778) 1 Doug KB 40. See also PARA 1149 post.

³ *Brown v Gerard* (1834) 3 Dowl 217, where it was held that the sheriff was not bound by an undertaking of his officer on behalf of the defendant that, in consideration of the plaintiff accepting a certain amount, the defences in the action should be withdrawn and the plaintiff should have judgment. In *Smith v Pritchard* (1849) 8 CB 565, the high sheriff of a county court was held to be not liable for assault and false imprisonment by a bailiff, not under colour of his warrant, but in assertion of a statutory power given to the individual officer wrongfully obstructed.

⁴ *Cook v Palmer* (1827) 6 B & C 739, where it was held that the sheriff was not liable to the assignees of the debtor for the balance of proceeds of goods taken in execution by a bailiff since the bailiff's authority to realise more than sufficient to satisfy the levy derived from the assignees, not from the sheriff; *Woods v Finnis* (1852) 7 Exch 363, where the bailiff, on the execution of a writ of *capias ad satisfaciendum* (since abolished), received the debt and costs and failed to pay over the amount and it was held that the sheriff was not liable, it being no part of the officer's duty, in executing such a writ, to receive the amount due on behalf of the creditor.

⁵ See *Crowder v Long* (1828) 8 B & C 598.

⁶ See *Wright v Child*(1866) LR 1 Exch 358; *Barclays Bank Ltd v Roberts*[1954] 3 All ER 107, [1954] 1 WLR 1212, CA.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(3) LIABILITY OF SHERIFF FOR ACTS OF OFFICERS/1147. Extent of liability.

1147. Extent of liability.

The sheriff's liability¹ extends not merely to acts done by his bailiff or officer in pursuance of his warrant², but also to anything done by him by colour of the warrant, the reason for the extended liability being that the sheriff is supposed to be executing his duty in person. The impossibility of so doing authorises him to delegate his duty, but he puts the delegate in his place and is therefore liable not only for acts done under the express authority of the warrant, but also for acts done in pursuance of the warrant generally³. Thus, if a bailiff to whom a warrant is delivered to execute a writ of fieri facias improperly authorises an assistant to execute it in his absence, the sheriff is liable for the acts and misconduct of the assistant, and for money received by him in reference to the execution, even though it may not have been paid over⁴.

The sheriff is liable even though the act done may have been contrary to the express terms of the writ⁵, or in disobedience to his express instructions⁶, provided only that it is done in the purported exercise of the officer's authority.

1 As to the principles of liability see PARA 1146 ante.

2 Where there is variance between the writ and the warrant, the sheriff is not necessarily liable for an illegal execution: *Rose v Tomblinson* (1834) 3 Dowl 49. As to the sheriff's warrant see CIVIL PROCEDURE.

3 *Raphael v Goodman* (1838) 8 Ad & El 565; *Smith v Pritchard* (1849) 8 CB 565 at 588 per Maule J; *Gregory v Cotterell* (1855) 5 E & B 571 at 585, Ex Ch. In practice, liability insurance is usually taken out to cover the actions of the sheriff and all persons executing a warrant under his authority. As to liability insurance generally see INSURANCE vol 25 (2003 Reissue) PARA 660 et seq.

4 *Gregory v Cotterell* (1855) 5 E & B 571, Ex Ch.

5 *Smart v Hutton* (1833) 8 Ad & El 568n, where a debtor was wrongfully detained under a writ of fieri facias.

6 *Scarfe v Halifax* (1840) 7 M & W 288 at 290.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(3) LIABILITY OF SHERIFF FOR ACTS OF OFFICERS/1148. Liability for acts of special bailiff.

1148. Liability for acts of special bailiff.

Where a special bailiff¹ is employed to execute a writ at the request of the execution creditor who gives him his instructions, the sheriff is not liable to the execution creditor for the bailiff's negligence or misconduct². In such a case, the sheriff is not bound to make a return to the writ, and if he does so he is not liable for a false return³. However, the employment of a special bailiff does not relieve the sheriff from his own general responsibility and duty, or from his liability to the execution creditor for his own negligence or that of his under-sheriff⁴: it only absolves him from liability to the execution creditor for the acts and defaults of the special bailiff⁵.

1 As to special bailiffs see PARA 1122 ante.

2 *De Moranda v Dunkin* (1790) 4 Term Rep 119; *Ford v Leche* (1837) 6 Ad & El 699; *Doe v Trye* (1839) 7 Dowl 636; *Futcher v Hinder* (1858) 3 H & N 757.

3 *De Moranda v Dunkin* (1790) 4 Term Rep 119; *Porter v Viner* (1815) 1 Chit 613n; *Pallister v Pallister* (1816) 1 Chit 614n; *Harding v Holden* (1841) 2 Man & G 914. As to the return to the writ see PARA 1136 ante.

4 As to the principles and extent of the sheriff's liability see PARAS 1146-1147 ante.

5 *Taylor v Richardson* (1800) 8 Term Rep 505.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(3) LIABILITY OF SHERIFF FOR ACTS OF OFFICERS/1149. Evidence to connect sheriff with officer.

1149. Evidence to connect sheriff with officer.

In order to maintain an action against a sheriff for the wrongful act or default of a bailiff or officer¹ it is necessary to show that the officer whose conduct is complained of was authorised by the sheriff in the particular transaction². As a general rule, either the original warrant directed by the sheriff to the bailiff should be produced and proved³, or the non-production of the original should be accounted for in such a manner as to warrant the admission of secondary evidence⁴. The production of a warrant proved to have been issued by the under-sheriff or the sheriff's London deputy to the particular officer under the sheriff's seal of office is sufficient, without proof of the writ of execution⁵. Proof of the warrant may also be dispensed with where there is other satisfactory evidence that the officer was duly authorised by the sheriff in the particular transaction⁶. If, by his conduct, the sheriff has recognised or shown an intention to adopt the officer's acts, that is sufficient evidence of privity, and such a recognition or adoption may be indicated by the pleadings in the action⁷.

1 As to the principles of liability see PARA 1146 ante.

2 *Drake v Sikes* (1797) 7 Term Rep 113; *George v Perring* (1801) 4 Esp 63; *Martin v Bell* (1816) 1 Stark 413; *Snowball v Goodricke* (1833) 4 B & Ad 541.

3 *Drake v Sikes* (1797) 7 Term Rep 113; *George v Perring* (1801) 4 Esp 63; *Martin v Bell* (1816) 1 Stark 413; *Snowball v Goodricke* (1833) 4 B & Ad 541.

4 To allow the admission of secondary evidence it is generally sufficient to give reasonable proof of loss of the original (*Moon v Raphael* (1835) 2 Bing NC 310; *Minshall v Lloyd* (1837) 2 M & W 450), or of service of a notice to produce on the sheriff's London agents to whom the warrant was sent (*Suter v Burrell* (1858) 2 H & N 867). As to secondary evidence generally see CIVIL PROCEDURE vol 11 (2009) PARA 878 et seq.

5 *Grey v Smith* (1808) 1 Camp 387; *Shepherd v Wheble* (1838) 8 C & P 534; *Bessey v Windham* (1844) 6 QB 166.

6 *Jones v Wood* (1812) 3 Camp 228, where documents were produced which were shown to have been written in the sheriff's office and directed to the particular officer requiring him to give instructions for a return to the writ; *Tealby v Gascoigne* (1817) 2 Stark 202; *Francis v Neave* (1821) 6 Moore CP 120 (proof of indorsement of officer's name on the writ by a clerk in the office of the under-sheriff); *Scott v Marshall* (1832) 2 Cr & J 238, where a copy of the writ indorsed with the bailiff's name was held to be sufficient on proof that it was the custom of the sheriff's office to indorse on the writ the name of the bailiff to whom the warrant was granted. However, it has been held insufficient merely to prove the writ with the bailiff's name written in the margin (*Jones v Wood* supra), or to produce an examined copy of the writ indorsed with the bailiff's name without proof that the indorsement was made by the sheriff's authority (*Hill v Sheriff of Middlesex* (1816) 7 Taunt 8). See also *Fermor v Philips* (1817) 5 Moore CP 184n; *Morgan v Brydges* (1818) 1 B & Ald 647; *Sarjeant v Cowan* (1832) 5 C & P 492.

7 *Martin v Bell* (1816) 1 Stark 413; *Smart v Hutton* (1833) 8 Ad & El 568n; *Barsham v Bullock* (1839) 10 Ad & El 23 (defence traversing the alleged wrong, but admitting in effect that the act was that of the defendant's officer); *Reed v Thoyts* (1840) 6 M & W 410 (similar case); *Brickell v Hulse* (1837) 7 Ad & El 454, where it was held that an affidavit of the officer used by the sheriff on a motion could be used against the sheriff in subsequent proceedings.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/(3) LIABILITY OF SHERIFF FOR ACTS OF OFFICERS/1150. Knowledge imputed to sheriff.

1150. Knowledge imputed to sheriff.

Except in cases where there is a statutory requirement that specific notice be given to the sheriff¹, the knowledge of a sheriff's officer of any fact or circumstance connected with his employment which it is his duty to communicate to the sheriff or under-sheriff operates as notice to the sheriff of that fact or circumstance²

1 See eg the Insolvency Act 1986 s 184(4); *Hellyer v Sheriff of Yorkshire* [1975] Ch 16, [1974] 2 All ER 712, CA; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 884. See also the Insolvency Act 1986 s 346; the Insolvency Rules 1986, SI 1986/1925 (as amended); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 679.

2 See generally AGENCY vol 1 (2008) PARAS 137-138.

UPDATE

1150 Knowledge imputed to sheriff

NOTE 1--Insolvency Act 1986 ss 184, 346 amended: Courts Act 2003 Sch 8 paras 296, 297.

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/ (4) OFFENCES/1151. Offences punishable as contempt of court and by penalty.

(4) OFFENCES

1151. Offences punishable as contempt of court and by penalty.

A sheriff, under-sheriff, bailiff or officer of a sheriff who acts in breach of the provisions of the Sheriffs Act 1887 is guilty of an offence¹. In addition, a sheriff, under-sheriff, bailiff or officer of a sheriff who (1) grants a warrant for the execution of any writ before he has actually received it²; or (2) is guilty of any offence against or breach of the provisions of the Act, or of any wrongful act or neglect or default in the execution of his office or of any contempt of a superior court³, is liable to be punished as for a contempt of court⁴ and to forfeit £200 and to pay all damages suffered by any person aggrieved⁵. Any proceedings under those provisions must be taken within two years after the commission of the alleged offence⁶, and the court may order that the costs of proceedings for contempt of court be paid by one party to the other⁷.

1 Sheriffs Act 1887 s 29(1)(d) (amended by the Local Government Act 1972 s 272(1), Sch 30). The offence is punishable on conviction with a term of imprisonment not exceeding one year and a fine or, if the defendant cannot pay a fine, a term of imprisonment not exceeding three years: Sheriffs Act 1887 s 29(1). There have been no reported cases under s 29 (as amended) this century, but see *Lee v Dangar, Grant & Co*[1892] 1 QB 231 (affd [1892] 2 QB 337, CA); *Woolford's Estate Trustee v Levy*[1892] 1 QB 772, CA (overcharging of sheriff's fees); *Bagge v Whitehead*[1892] 2 QB 355, CA.

2 Sheriffs Act 1887 s 29(2)(c).

3 Ibid s 29(2)(d).

4 See ibid s 29(2)(i), (3), (5) (s 29(3) amended by the Statute Law Revision Act 1908; and the Courts Act 1971 s 56, Sch 11 Pt IV). The Sheriffs Act 1887 s 29 (as amended) also applies to any person procuring the commission of an offence.

5 Ibid s 29(2)(ii). See also note 4 supra. The forfeiture and damages can be recovered as a debt by an action in the High Court: s 29(2) (amended by the Statute Law Revision Act 1908). The penalty of £200 is imposed for acts in the nature of a criminal offence and to support an action for its recovery there must be evidence of criminal intent on the part of the defendant, a person making an unintentional overcharge not being liable: *Lee v Dangar, Grant & Co*[1892] 1 QB 231 (affd [1892] 2 QB 337, CA); *Woolford's Estate Trustee v Levy*[1892] 1 QB 772, CA. The only persons liable are those actually committing the offence or procuring its commission: *Bagge v Whitehead*[1892] 2 QB 355, CA. A more appropriate remedy is an action for damages against the sheriff: see CIVIL PROCEDURE. Where malice is proved, the court may consider awarding exemplary damages: see *Moore v Lambeth County Court Registrar (No 2)*[1970] 1 QB 560 at 572, [1970] 1 All ER 980 at 986, CA, per Sachs LJ.

6 See the Sheriffs Act 1887 s 29(7). No person is liable to be punished twice for the same offence: see s 29(8).

7 See ibid s 29(4) (amended by the Statute Law Revision Act 1908). The order for costs has the same effect as a judgment of the High Court, and may be enforced accordingly: Sheriffs Act s 29(4) (as so amended).

UPDATE

1151 Offences punishable as contempt of court and by penalty

TEXT AND NOTES 2-5--See further Sheriffs Act 1887 s 29(2A) (added by Courts Act 2003 Sch 8 para 62).

Halsbury's Laws of England/SHERIFFS (VOLUME 42 (REISSUE))/2. POWERS, DUTIES AND LIABILITIES/ (4) OFFENCES/1152. Wrongful assumption of office.

1152. Wrongful assumption of office.

Any person, not being an under-sheriff, bailiff, or officer of a sheriff, who assumes or pretends to act as such, is liable to punishment as if he were an under-sheriff guilty of a contempt of the High Court¹.

¹ Sheriffs Act 1887 s 29(6) (amended by the Statute Law Revision Act 1908; and the Theft Act 1968 s 33(3), Sch 3 Pt I): see PARA 1151 ante.

